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Attorneys for Defendant,  
**BSH HOME APPLIANCES CORPORATION**

**IN THE UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION – SANTA ANA**

SHARON COBB, BEVERLY  
GIBSON, TRISH ISABELLA, DIANA  
TAIT, NANCY WENTWORTH,  
individually and on behalf of all others  
similarly situated

Plaintiffs,

vs.

BSH HOME APPLIANCES  
CORPORATION, a Delaware  
Corporation,

Defendant.

Case No. SACV10-711-DOC (ANx)

**REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF  
DEFENDANT BSH HOME  
APPLIANCES CORPORATION'S  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION**

[Filed in Support of and Concurrently  
with Opposition to Plaintiffs' Motion  
for Class Certification]

[Fed. R. Evid. 201]

**Date : SEPTEMBER 5, 2012**  
**Time : 9:00 A.M.**  
**Courtroom : 9D**

*Assigned to:*  
U.S. District Judge: David O. Carter  
Courtroom: 9D

Discovery Magistrate Judge: Arthur  
Nakazato

1           **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2           Pursuant to Rule 201 of the Federal Rules of Evidence and the authorities  
3 cited below, Defendant BSH Home Appliances Corporation (“BSH”), by and  
4 through its attorneys, respectfully requests that the Court take judicial notice of the  
5 documents identified below and attached as Exhibits A through J, submitted  
6 concurrently herewith. This request is made in connection with BSH’s Opposition  
7 to Plaintiffs’ Motion for Class Certification.

8           **Exhibit A:** “Class Action Complaint” in *Kleinman v. BSH Home Appliances*  
9 *Corporation*, Case No. BC417680 (Superior Court of California, County of Los  
10 Angeles, filed on July 13, 2009).

11           **Exhibit B:** Court Order in *Kleinman v. BSH Home Appliances*  
12 *Corporation*, Case No. BC417680 (Superior Court of California, County of Los  
13 Angeles) (October 7, 2010 Minute Order Dismissing Case).

14           **Exhibit C:** Court Order in *Butler, et al. v. Sears, Roebuck & Co.*, Case No.  
15 06-CV-7023 (N.D. Ill. Sep. 30, 2011)(“Order” – denying, in part, and granting, in  
16 part, Plaintiffs’ Motion for Class Certification).

17           **Exhibit D:** Court Order in *Dickerson, et al. v. Electrolux Home Products,*  
18 *Inc.*, Case No. CV10-5163-R-JEMx (C.D. Cal. Jan. 19, 2011) (“Order Denying  
19 Plaintiffs’ Motion for Class Certification”).

20           **Exhibit E:** “First Amended Class Action Complaint” in *Dickerson, et al.*  
21 *v. Electrolux Home Products, Inc.*, Case No. CV10-5163-R-JEMx (C.D. Cal., filed  
22 Aug. 31, 2010).

23           **Exhibit F:** “Master Class Action Complaint” in *In re: Whirlpool Corp.*  
24 *Front-Loading Washer Products Liability Litigation*, Case No. 1:08-wp-65000,  
25 MDL No. 2001 (N.D. Ohio, filed Feb. 13, 2009).

26           **Exhibit G:** “Class Action Complaint” in *Butler, et al. v. Sears, Roebuck &*  
27 *Co.*, Case No. 06-CV-7023 (N.D. Ill., filed Dec. 19, 2006).

28       ///

1       **Exhibit H:** “Class Action Complaint and Demand for Jury Trial” in  
2       *Fishman v. General Electric Company*, Case No. 2:12-cv-00585-WJM-MF (D.  
3       N.J., filed Jan. 31, 2012).

4       **Exhibit I:** “Amended Class Action Complaint and Demand for Jury  
5       Trial” in *Montich v. Miele USA, Inc.*, Case No. 11-2725-FLW-DEA (D. N.J., filed  
6       Apr. 16, 2012).

7       **Exhibit J:** “Consolidated Amended Complaint” in *In Re LG Front Load*  
8       *Washing Machine Class Action Litigation*, Case No. 2:08-cv-00051-FSH-MAS (D.  
9       N.J., filed May 6, 2008).

10  
11                   **BASIS FOR REQUESTING JUDICIAL NOTICE**

12       A court may take judicial notice of facts that are “not subject to reasonable  
13       dispute.” Fed. R. Evid. 201(b). This includes proceedings in other courts. *U.S. ex*  
14       *rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244 (9<sup>th</sup> Cir.  
15       1992) (a court ““may take notice of proceedings in other courts, both within and  
16       without the federal judicial system, if those proceedings have a direct relation to  
17       matters at issue.”)(Citing, *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169,  
18       1172 (10<sup>th</sup> Cir. 1979)).

19       Exhibits A and B, submitted herewith, are filings from the Superior Court of  
20       the State of California, for the County of Los Angeles and include Plaintiff’s Class  
21       Action Complaint and the Court’s Minute Order dismissing the case, respectively.  
22       Exhibits C and D, submitted herewith, are orders from the files of this district court  
23       (Western Division of the Central District of California) and another federal district  
24       (Northern District of Illinois), respectfully. Exhibits E through J, submitted  
25       herewith, are complaints from the files of this district court and other district  
26       courts. The contents of the filings set forth in each Exhibit are public records that  
27       “can be accurately and readily determined from sources whose accuracy cannot  
28       reasonably be questioned.” Fed. R. Evid. 201(b)(2). These Exhibits reflect

1 proceedings in other state and federal courts and are appropriate for judicial notice  
2 because they relate to issues similar to those being litigated here, specifically,  
3 proposed classes of purchasers of washing machine claiming washing machine  
4 defects. Accordingly, BSH respectfully requests that this Court take judicial notice  
5 of Exhibits A through J to demonstrate their existence and similarity to the claims  
6 in this case.

7 For the foregoing reasons, Exhibits A through J may properly be considered  
8 by the Court in support of BSH's opposition to Plaintiffs' Motion for Class  
9 Certification.

10  
11 DATED: July 11, 2012

**WILLIS DEPASQUALE, LLP**

12  
13  
14 By /s/ James M. Hansen  
15 JAMES M. HANSEN  
16 THOMAS M. RUTHERFORD, JR.  
17 Attorneys for Defendant,  
18 **BSH HOME APPLIANCES**  
19 **CORPORATION**

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250\0100005\Req. for Judicial Ntc - MCC

# EXHIBIT A

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Attorneys for Plaintiff and  
the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

LESLEY KLEINMAN, on Behalf of Herself  
and All Others Similarly Situated,

Plaintiff,

v.

BSH HOME APPLIANCES CORPORATION  
and DOES 1 through 100, inclusive,

Defendants.

Case No.:

**CLASS ACTION**

**COMPLAINT FOR:**

1.) Unlawful Business Practice in  
Violation of California Business &  
Professions Code § 17200, *et seq.*

2.) False & Misleading Advertising in  
Violation of California Business &  
Professions Code § 17500, *et seq.*

3.) Violation of Consumer  
Legal Remedies Act

4.) Breach of Consumer Warranty Act,  
California Civil Code § 1790, *et seq.*

5.) Breach of Express Warranty

**JURY TRIAL DEMANDED AND TO ALL  
ISSUES SO TRIABLE**

Exhibit A Pg. 6

CLASS ACTION COMPLAINT

**FILED**  
Los Angeles Superior Court

JUL 13 2009

John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY, Deputy

BC417680 LEA/DEF#:  
RECEIPT #: CCH465980073  
DATE PAID: 07/13/09 01:10:25 PM  
PAYMENT: \$550.00  
RECEIVED: 0310

BC417680 LEA/DEF#:  
RECEIPT #: CCH465980072  
DATE PAID: 07/13/09 01:06:48 PM  
PAYMENT: \$550.00  
RECEIVED: 0310



1 Plaintiff Lesley Kleinman brings this action against Defendant BSH Home Appliances  
2 Corporation ("Defendant" or "BSH") and Does 1-100, inclusive on behalf of herself and all  
3 others similarly situated, upon information and belief, except as to her own actions, the  
4 investigation of her counsel, and the facts that are a matter of public record, as follows:

5 INTRODUCTION

6 1. This consumer class action arises out of design flaws and Defendant's  
7 misrepresentations and omissions with respect to Defendant's Front Loading Washing Machines  
8 (the "Washing Machines" or "Machines"). All of the Washing Machines possess a common  
9 inherent design defect in the dryer drum and/or the door gasket seal or elsewhere that causes  
10 water to not fully and properly drain after each wash cycle. The resulting water causes mold,  
11 mildew or similar residue to accumulate in the Washing Machines which produces mold and foul  
12 odors to escape from the Machines and to be on clothes and other items washed in the Machines.  
13 Defendant marketed the defective Machines as providing superior quality and failed to disclose  
14 the defects in order to sell more Machines.

15 2. As a result of Defendant's misrepresentations and/or omissions regarding the  
16 Washing Machines, Plaintiff and Class members overpaid for the Washing Machines because the  
17 value of the Washing Machines was diminished at the time they were sold to consumers. Had  
18 Plaintiff and Class members been made aware that the Washing Machines could not perform as  
19 represented, they would not have purchased the Washing Machines, or would have paid  
20 substantially less for them.

21 3. Plaintiff asserts claims on behalf of a nationwide Class and/or a California Sub-  
22 Class under, *inter alia*, California Business & Professions Code §§17200, *et seq.* ("UCL"),  
23 California Business & Professions Code §§17500, *et seq.* ("FAL"), the California Consumers  
24 Legal Remedies Act ("CLRA"), Civil Code §§1750, *et seq.*, and the California Consumer  
25 Warranty Act, Civil Code §§1790, *et seq.*, and asserts claims for breach of warranty.

26 ///

27 ///

28 ///

Exhibit 4 Pg. 7

1 JURISDICTION AND VENUE

2 4. This Court has jurisdiction over this action pursuant to Code of Civil Procedure  
3 § 410.10. In the aggregate, the damages suffered and sought to be recovered by Plaintiff and the  
4 Class she seeks to represent exceed the jurisdictional minimum of this Court, but neither the  
5 Plaintiff nor any member of the Class individually has suffered damages of at least \$75,000.

6 5. Venue is proper in this Court since, as detailed below, a substantial number of  
7 Defendant's products involved in the action were sold in this County, Defendant received  
8 substantial compensation from sales of their products in this County by doing business here and  
9 Defendant made numerous misrepresentations and/or omissions which had effect in this County.  
10 Thus, as to the named Plaintiff, thousands of Class members and a portion of the overall Class,  
11 certain liability of the Defendant arose in part in this County.

12 THE PARTIES

13 6. Plaintiff Lesley Kleinman is, and at all material times was, a resident in the county  
14 of Los Angeles, California.

15 7. Defendant maintains its principal place of business at 551 McFadden Avenue,  
16 Huntington Beach, California 92649. BSH is a wholly owned subsidiary of BSH Bosch and  
17 Siemens Home Appliances Group based in Munich, Germany. BSH is the world's third largest  
18 leading manufacturer of high-end appliances and sells under the Bosch, Siemens, Thermador and  
19 Gaggenau brand in the United States. Defendant maintains a website at  
20 <http://www.bsh-group.us>, and <http://boschappliances.com>. The BSH headquarters in Huntington  
21 Beach includes Executive Offices, Sales, Marketing, Finance, Logistics, IT, HR, and Customer  
22 Support.

23 8. At all times herein mentioned, Defendants were the co-conspirators, agents,  
24 servants, employees, and/or joint venturers of each of the other Defendants and was acting within  
25 the course and scope of said conspiracy, agency, employment, and/or joint venture and with the  
26 permission and consent of each of the other Defendants.

27 9. The true names and capacities of Defendants sued in this Complaint as Does 1-  
28 100, inclusive, are currently unknown to Plaintiff, who therefore sue such Defendants by such

Exhibit 4 Pg. 8



1 fictitious names. Each of the Defendants designated herein as a Doe is legally responsible in  
2 some manner for the unlawful acts referred to herein. Plaintiffs will amend this complaint to  
3 reflect the true names and capacities of the Defendants designated herein as Does 1 through 100  
4 when such identities become known.

5 **SUBSTANTIVE ALLEGATIONS**

6 10. On or about February 17, 2007, Plaintiff purchased a Bosch Nexxt DLX Series  
7 Washer, Model No. WPMC4301 and paid approximately \$1,500. Plaintiff purchased her  
8 Washing Machine and used it for its intended purpose and in a manner consistent with its  
9 intended use.

10 11. Defendant provided Plaintiff and all owners of the Washing Machines with a 1  
11 year full limited warranty from the date of installation, warranting that the Washing Machines  
12 were free from defects in materials and workmanship and warranting that Bosch will repair or  
13 replace, free of charge any component part that proves defective under conditions of normal use,  
14 labor and shipping costs included. Defendant also provided Plaintiff and all owners of the  
15 Washing Machines with a 2 year limited warranty from date of installation, warranting that  
16 Bosch will provide replacement parts, free of charge, for any component part that proves  
17 defective under conditions of normal home use, shipping costs included, labor charges excluded.

18 12. In purchasing her Machine, Plaintiff relied upon, *inter alia*, the representations,  
19 advertising and/or other promotional materials regarding the Machines which were prepared,  
20 approved and disseminated by Defendant and its agents and contained the misrepresentations  
21 and/or omissions alleged herein. Nowhere did Defendant disclose that its Machines contained a  
22 defect and/or that the Machines would cease to work properly or develop mold or mildew. While  
23 the Operator's Manual explains in detail various important safeguards, nowhere in the literature  
24 is there any information concerning issues with mold or mildew as alleged herein.

25 13. Defendant intended for customers to believe its uniform statements about its  
26 Washing Machines and to trust that its high-end Washing Machines were of first rate quality,  
27 despite Defendant's knowledge that these statements were misleading due to its omission of the  
28

1 material facts about defects in its Machine resulting in mold, mildew and foul odors, as alleged  
2 herein.

3 14. Defendant's representations regarding the Washing Machines are false,  
4 misleading and/or fail to disclose material facts. Defendant knew or should have known and/or  
5 were reckless in not knowing that their representations concerning the Washing Machines were  
6 false, misleading and/or failed to disclose material facts.

7 15. The non-disclosed information regarding the Washing Machines is and was  
8 material to a reasonable consumer. The facts concealed or not disclosed by Defendant are  
9 material in that, *inter alia*, reasonable people would have considered them important in making  
10 their informed purchasing decisions. As alleged herein, the omitted information was material to  
11 Plaintiff. Had the omitted information been disclosed, Plaintiff would have been aware of it and  
12 acted differently. For example, Plaintiff would not have purchased the Washing Machine or  
13 would have paid less for it.

14 16. In 2008, Plaintiff noticed mold, mildew or a similar residue forming in the door  
15 panel of her Washing Machine. In addition, there was a foul and noxious odor which emanated  
16 from the Washing Machine when the door was opened. Plaintiff contacted Defendant's  
17 customer service department and requested assistance. A service technician was dispatched to  
18 Plaintiff's home to repair the malfunction. However, after spending just a few minutes  
19 troubleshooting, the technician informed Plaintiff that he could find "nothing wrong," with the  
20 Washing Machine.

21 17. On or about June 15, 2009, Plaintiff again contacted Defendant's customer service  
22 department regarding the persistent problems of mold, mildew and the foul smelling odor  
23 emanating from her Washing Machine. The service representative at that time instructed  
24 Plaintiff to purchase a cleaning agent, "AFFRESH." The service representative informed  
25 Plaintiff that if after using the suggested product, the problem did not correct itself, it meant that  
26 the [mold, mildew] was "imbedded in the gasket," and [it] "would have to be replaced."

27 18. On information and belief, Defendant at various times has offered other forms of  
28 "canned" responses in response to complaints from customers regarding the mold and mildew

Exhibit A Pg. 10

1 problem. None of these solutions was set forth in the Operator's Manual or elsewhere in  
2 documentation that accompanied the sale of the Machines.

3 19. As a result of Defendant's representations and/or omissions regarding the  
4 Washing Machines, Plaintiff overpaid for the Washing Machines because the value of the  
5 Washing Machines was diminished at the time of sale. Had Plaintiff been made aware that the  
6 Washer could not be used as advertised, she would not have purchased it or would have paid less  
7 for it. Plaintiff suffered injury in fact and has lost money or property as a result of Defendant's  
8 actions.

9 20. Plaintiff and Class members reasonably expected that the Washing Machines  
10 would not contain design defects that would substantially impair the Machines' performance and  
11 use. Plaintiff and the Class reasonably expected that the Machines would not require extensive  
12 and expensive repairs as a result of the defect which was known to Defendant at the time of sale.

13 21. Defendant profited by concealing the nature of the defects because Defendant has  
14 been able to convince a large number of consumers to buy the Washing Machines and to pay  
15 Defendant for repair services to address the problems resulting from the defects at issue even  
16 though Defendant has no remedy for the defects.

17 22. Defendants was aware of the mold, mildew and odor problems with the machines  
18 at issue in this case. Defendant also has been advised by scores of Class members of this issue  
19 and its negative impact on the Machines' performance. Many members of the Class have posted  
20 their experiences with the defective Machines on the Internet. Despite such notice, Defendants  
21 failed to acknowledge or remedy the issue, issue a recall, pay consumers for repairs, or provide  
22 notification of the issue on its website or other forms of publication. To this day, Defendants  
23 have not taken the necessary steps to address the problems of which Defendants were well aware.  
24 Defendant consistently has denied the scope and magnitude of the problems caused by the  
25 defects. Apparently unwilling to admit fault, Defendant sat silent while consumers bought this  
26 defective product, knowing that it would malfunction, in an effort to "run out the clock" on the  
27 warranties. Moreover, in the face of its knowledge of the design defect that was present in the  
28

Exhibit A Pg. 11

1 Washing Machines at the time of sale, Defendant placed a one (1) year limitation on its warranty  
2 that purported to cover the Washing Machines.

3 23. Defendant had a duty to disclose the material facts alleged herein, even including  
4 mold and mildew problems that occurred or manifested after the warranty period. Plaintiff's  
5 claims are not limited by the warranty period because mold and mildew are a safety issue. These  
6 safety issues were of concern to Plaintiff and the Class. The presence of mold and mildew in the  
7 machines poses a threat to Plaintiff's safety and the safety of others which Defendant had a duty  
8 to disclose. Inhaling and touching mold can cause allergic reactions, including sneezing and skin  
9 rash. Allergic reactions to mold are common. Mold exposure can also irritate the eyes, skin,  
10 nose, throat and lungs. Severe sufferers may endure shortness of breath, tightening of the throat  
11 and even respiratory distress. Mold can also cause other problems such as severe memory  
12 impairment, irritable bowel syndrome and chronic fatigue.

13 24. Further, Defendant had a duty to disclose the material facts alleged herein  
14 because Defendant had exclusive knowledge of material facts not known to Plaintiff and the  
15 Class, and/or was in a superior position to know the undisclosed information and because  
16 Defendant actively concealed the material information further creating a duty to disclose.

17 25. Defendant's duty to disclose also arises from the fact that Defendant made partial  
18 representations regarding the operation of the Washing Machines (such as the section on  
19 "Troubleshooting" in the Owners' Manual which describes other issues but not mildew or water  
20 build-up) but also suppressed other material facts *i.e.*, the facts as alleged herein regarding  
21 defects in the Machines. Defendant's conduct in issuing "partial disclosures" after the sale/lease  
22 (*e.g.*, in the Owner's Manual) created a further duty to disclose. Having spoken, Defendant had a  
23 duty to speak the full and complete truth without material omissions.

24 26. Further, as a seller, Defendant had a general duty to disclose the omitted facts  
25 because they were known to Defendant but not accessible to consumers buying the Washing  
26 Machines prior to the transactions.

27 27. Defendant also had a duty to disclose facts known to Defendant that differed from  
28 Plaintiff's ordinary and reasonable expectation and that were likely to deceive consumers in the

Exhibit A Pg. 12

1 absence of such disclosures. As alleged herein, consumers, such as Plaintiff, had a reasonable  
2 expectation or assumption that their Washing Machines would not contain defects that caused  
3 mold, mildew and or similar problems.

4 28. The substantive legal provisions of the UCL also impose a duty on Defendant not  
5 to engage in unfair, unlawful, fraudulent and deceptive business practices and not to conceal  
6 material facts.

7 29. As a result of Defendant's conduct, Plaintiff and the members of the Class have  
8 been injured in fact and lost money or property and/or were damaged in connection with the  
9 purchases of their Washing Machines.

10 30. On information and belief, the issues as described below with the Washing  
11 Machines may extend to other models or products, and Plaintiff expressly reserves the right to  
12 amend this Complaint to include these other models and products.

13  
14 **CLASS ACTION ALLEGATIONS**

15 31. Without prejudice to later expansion or modification, Plaintiff brings this action as  
16 a member and/or representative of the following Classes and Subclass:

- 17 (a) A nationwide Class consisting of all persons or entities who purchased the  
18 Washing Machines; and/or  
19 (b) A Class consisting of all persons or entities in California who purchased  
20 the Washing Machines; and/or  
21 (c) A Sub-Class consisting of all class members who are "consumers" as  
22 defined by California Civil Code § 1761(d).

23 32. Excluded from the Classes and Subclass are Defendant, any entity which  
24 Defendant have a controlling interest, and any of the Defendant's subsidiaries, affiliates, and  
25 officers, directors, or employees, and any legal representative, heir, successor, or assignee of  
26 Defendant.

27 33. This action has been brought and may properly be maintained as a class action  
28 pursuant to California Code of Civil Procedure § 382 and Civil Code § 1781, and case law

Exhibit A Pg. 13



1 thereunder, to which the California trial courts have been directed by the California Supreme  
2 Court to look for guidance.

3 34. The members of the Classes and Subclass are so numerous that joinder of all  
4 members is impracticable. While the exact number of Class and Subclass members is unknown  
5 to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is  
6 informed and believes, and on that basis alleges, that thousands of persons are members of the  
7 Classes and Subclass.

8 35. There is a well-defined community of interest in the questions of law and fact  
9 affecting the parties represented in this action.

10 36. Common questions of law and fact exist as to all members of the Classes and  
11 Subclass. These common questions predominate over the questions affecting only individual  
12 Class members.

13 37. The questions common to members of the Classes and Subclass are, *inter alia*:

- 14 (a) Whether Defendant engaged in unlawful, deceptive or unfair acts and  
15 practices in violation of state consumer protection statutes, including  
16 California Consumer Legal Remedies Act §1750, *et seq.*, California  
17 Bus. & Prof. Code §§ 17200 and 17500, *et seq.*;
- 18 (b) Whether Defendant, through their conduct, received money that, in equity  
19 and good conscience, belongs to the proposed Classes and Subclass;
- 20 (c) Whether Plaintiff and the Classes and Subclasses are entitled to equitable  
21 relief, including but not limited to restitution and/or disgorgement;
- 22 (d) Whether Plaintiff and the Classes and Subclass are entitled to the  
23 injunctive relief sought herein; and
- 24 (e) The nature and extent of damages and other remedies to which proposed  
25 Class members are entitled as a result of Defendant's wrongful conduct.
- 26 (f) Whether Defendant concealed or attempted to conceal from the Class and  
27 the public that the Washing Machines have a design defect;
- 28

Exhibit A Pg. 144



- 1 (g) Whether Defendant concealed or attempted to conceal from the Class and  
2 the public that the Washing Machines are not of merchantable quality;  
3 (h) Whether Defendant's false and/or misleading statements of fact and its  
4 concealment of material fact regarding the performance and reliability of  
5 the Washing Machines were likely to deceive the public.

6 38. Plaintiff's claims are typical of the claims of the members of the Classes and  
7 Subclass as all members of the Classes and Subclass are similarly affected by Defendant's  
8 wrongful conduct. Plaintiff has no interests antagonistic to the interests of the other members of  
9 the Classes and Subclass. Plaintiff and all members of the Classes and Subclass have sustained  
10 monetary damages arising out of the Defendant's violations of statutory law as alleged herein.

11 39. Plaintiff's claims are made in a representative capacity on behalf of the other  
12 members of the Classes and Subclass. Plaintiff has no interests antagonistic to the interests of the  
13 other members of the proposed Classes and Subclass and is subject to no unique defenses.

14 40. Plaintiff is similarly situated in interest to all of the members of the proposed  
15 Classes and Subclass and is committed to the vigorous prosecution of this action and has retained  
16 competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiff is an  
17 adequate representative of the proposed Classes and Subclass and will fairly and adequately  
18 protect the interests of the Classes and Subclass.

19 41. Plaintiff explicitly reserves the right to add additional class representatives,  
20 provided that Defendant are given an opportunity to conduct discovery on the chosen  
21 representative(s). Plaintiff will identify and propose class representatives with the filing of  
22 Plaintiff's motion for class certification.

23 42. A class action, particularly a nationwide class, is superior to all other available  
24 methods for the fair and efficient adjudication of this controversy, since joinder of all members is  
25 impracticable. Furthermore, as the damages suffered by individual Class members may be  
26 relatively small, the expense and burden of individual litigation make it impossible for members  
27 of the Classes and Subclass to individually redress the wrongs done to them.

1           43.     There will be no difficulty in the management of this class action. Individualized  
2 litigation presents the potential for inconsistent or contradictory judgments. A class action  
3 presents far fewer management difficulties and provide the benefits of single adjudication,  
4 economy of scale, and comprehensive supervision by a single court.

5           44.     Certification of such a class under the laws of California is appropriate because:

- 6           (a)     Defendant is a California corporation conducting substantial business in  
7                   and from California;
- 8           (b)     Defendant's principal and executive offices, as well as its corporate  
9                   headquarters, are located in California;
- 10          (c)     Defendant's marketing, promotional activities and literature are  
11                   coordinated at, emanate from, and/or are developed at its California  
12                   headquarters;
- 13          (d)     The Unfair Competition Laws expressly apply to claims asserted by out-  
14                   of-state Class members regarding false representations and/or omissions  
15                   emanating from California;
- 16          (e)     A significant number of Class members reside in California, and the  
17                   number of local class members is substantially larger than class members  
18                   from any other state. On information and belief, more than one-third of  
19                   the proposed Class members (and the primary Defendant) are citizens of  
20                   California.

21                   **FIRST CAUSE OF ACTION**

22                   **(Unlawful, Unfair and Deceptive Business Practices in Violation of**  
23                   **California Business & Professions Code §17200, et seq. - As to All Defendants)**

24           45.     Plaintiff hereby incorporates the above allegations by reference as if set forth fully  
25 herein.

26           46.     Plaintiff brings this cause of action on behalf of herself and on behalf of the  
27 Classes.  
28

Exhibit   A   Pg.   16

1           47.     The Unfair Business Practices Act defines unfair business competition to include  
2 any "unfair," "unlawful," or "fraudulent" business act or practice. California  
3 Bus. & Prof. Code §§ 17200 and 17500, *et seq.* The Act also provides for injunctive relief and  
4 restitution for violations.

5           48.     Defendant's conduct as alleged herein constitutes unlawful, unfair and/or  
6 fraudulent business acts and practices.

7           49.     By engaging in the above-described acts and practices, Defendant has committed  
8 one or more acts of unfair competition within the meaning of California  
9 Bus. & Prof. Code §§ 17200 and 17500, *et seq.*

10          50.     Defendant's acts and practices as described herein have deceived and/or were  
11 likely to deceive Plaintiff and members of the consuming public, and Plaintiff suffered actual  
12 harm as a result.

13          51.     The injury to Plaintiff and consumers greatly outweigh any alleged countervailing  
14 benefit to consumers or competition under all of the circumstances. Specifically, Defendant sold  
15 Plaintiff and other Class members Washing Machines with a design defect that manifested  
16 shortly, if not during or immediately following the expiration of the one-year limited warranty.  
17 This injury clearly constitutes substantial injury as the Machines develop serious problems  
18 during or immediately after only one year. The injury to Plaintiff and other Class members is not  
19 outweighed by any countervailing benefit. Indeed, there is no benefit to consumers by allowing  
20 Defendant to knowingly market and sell a defective product and such conduct is facially unfair.  
21 The injury alleged herein could not reasonably have been avoided by Plaintiff and other Class  
22 members because it was caused by a design defect that was not disclosed by Defendant, but  
23 could have readily been avoided if Defendant had not misled Plaintiff and other Class members  
24 and concealed the existence of the design defect from them.

25          52.     Further, the acts and practices of Defendant are unlawful because they violate or  
26 violated one or more of the following: California Civil Code §§1770(a)(5), (a)(7), (a)(9),(a)(16),  
27 (a)(19); California Commercial Code §2313; and California Bus. & Prof. Code §§ 17200 and  
28 17500, *et seq.*

Exhibit   A   Pg.   17

1           53. Unless Defendant is enjoined from continuing to engage in the unlawful, unfair,  
2 fraudulent, untrue, and deceptive business acts and practices as described herein, consumers  
3 residing within the United States, including California, will continue to be exposed to and  
4 damaged by Defendant's unfair competition.

5           54. Plaintiffs and members of the Classes suffered injury in fact and have lost money  
6 or property as a result of Defendant's unfair competition, as more fully set forth herein. Plaintiff  
7 and members of the Classes have been injured because they overpaid for the Washing Machines  
8 since the value of the Washing Machines was diminished at the time of sale. Plaintiff and  
9 members of the Classes have been injured because had they been made aware that the Washing  
10 Machines could not be used as advertised, they would not have purchased the Machine, or would  
11 have paid less for it.

12           55. Defendant, through its acts of unfair competition, has unfairly acquired money  
13 from the public. It is impossible for the Plaintiff to determine the exact amount of money that  
14 Defendant has obtained without a detailed review of Defendant's books and records. Plaintiff  
15 requests that this Court restore this money and enjoin Defendant from continuing to violate  
16 California Bus. & Prof. Code §§ 17200 and 17500, *et seq.*, as discussed above.

17           56. Plaintiff seeks an order requiring Defendant to undertake a public information  
18 campaign to inform members of the Classes of its prior acts or practices and notify members of  
19 the Classes as to the presence of potential restitutionary relief.

20           57. Plaintiff also seeks an order requiring Defendant to (a) make full restitution of all  
21 monies wrongfully obtained and (b) disgorge all ill-gotten revenues and/or profits, together with  
22 interest thereon.

23           58. Plaintiff also seeks attorney's fees and costs pursuant to, *inter alia*, California  
24 Civil Code §1021.5.

25 ///

26 ///

27 ///

28 ///

Exhibit A Pg. 18

**SECOND CAUSE OF ACTION**

**(False and Misleading Advertising in Violation of  
California Business & Professions Code §17500, *et seq.* - As to All Defendants)**

59. Plaintiff hereby incorporates the above allegations by reference as if set forth fully herein.

60. Plaintiff brings this cause of action on behalf of herself and on behalf of the Classes.

61. The misrepresentations, acts and non-disclosures by Defendant of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of California Bus. & Prof. Code §17500, *et seq.*

62. At all times relevant, Defendant's advertising and promotion regarding their Washing Machines was untrue, misleading and likely to deceive the public and/or has deceived the Plaintiff and consumers.

63. In making and disseminating the statements and/or omissions alleged herein, Defendant knew or should have known that the statements and/or omissions were untrue or misleading, and acted in violation of California Bus. & Prof. Code §§ 17200 and 17500, *et seq.*

64. Plaintiff and members of the Classes have suffered injury in fact and have lost money or property as a result of Defendant's unfair competition, as more fully set forth herein. Plaintiff and members of the Classes have been injured because they overpaid for the Washing Machines since the value of the Washing Machines was diminished at the time of sale. Plaintiff and members of the Classes have been injured because had they been made aware that the Washing Machines could not be used as advertised, they would not have purchased the Washing Machines, or would have paid less for it.

65. Unless Defendant is enjoined from continuing to engage in such wrongful actions and conduct, members of the Classes will continue to be damaged by Defendant's false and/or misleading advertising.

Exhibit A Pg. 19



66. Plaintiff also seeks an order requiring Defendant to (a) make full restitution of all monies wrongfully obtained and (b) disgorge all ill-gotten revenues and/or profits, together with interest thereon.

### THIRD CAUSE OF ACTION

**(Violation of Consumers Legal Remedies Act,  
California Civil Code §1750, et seq. - As to All Defendants)**

67. Plaintiff hereby incorporates the above allegations by reference as if set forth fully herein.

68. Plaintiff brings this cause of action on behalf of herself and on behalf of the Subclass seeking permanent relief pursuant to the Consumer Legal Remedies Action, California Civil Code §1750, *et seq.*

69. The CLRA applies to Defendant's actions and conduct described herein because it extends to transactions that are intended to result, or which have resulted, in the sale goods to consumers for personal, family or household use.

70. Plaintiff and each member of the Subclass are “consumers” within the meaning of the Civil Code § 1761(d).

71. Defendant's conduct as alleged herein constitutes a "transaction" within the meaning of Civil Code § 1761(cc).

72. Defendant has violated and continue to violate, the CLRA in at least the following respects:

(a) in violation of Civil Code § 1770(a)(5), Defendant has represented that the Washing Machines have characteristics and benefits they do not have, to wit, that they are free from defects in material or workmanship and conform to the factory specifications;

(b) in violation of Civil Code § 1770(a)(7), Defendant has represented that the Washing Machines are of a particular standard when they are not, to wit, that they are free from defects in material or workmanship, conform to the factory specifications, and are of merchantable quality;

Exhibit A Pg. 20



- 1 (c) in violation of Civil Code §1770(a)(9), Defendant has advertised the Washing  
2 Machines with an intent not to sell them as advertised, to wit, that they are  
3 reliable, they are free from defects in material or workmanship, and that they  
4 conform to factory specifications;
- 5 (d) in violation of Civil Code §1770(a)(14), Defendant has represented to  
6 consumers that it has no obligation to repair or replace the Washing Machines  
7 even though they suffer from a common design defect of which  
8 Defendant is aware;
- 9 (e) in violation of Civil Code §1770(a)(16), Defendant represented that the Washing  
10 Machines have been supplied in accordance with previous representations when it  
11 knew they have not, to wit, that they are free from defects in material or  
12 workmanship, and that they conform to factory specifications; and
- 13 (f) in violation of Civil Code § 1770 (a)(19), Defendant has inserted an  
14 unconscionable provision in its limited warranty that contained a time limitation  
15 of a one (1) year period and purports to exclude serious design defects from  
16 warranty coverage. The warranty was included within the packaging of the  
17 Washing Machines and was unilaterally imposed by Defendant without  
18 negotiation on a "take it or leave it" basis. The limited warranty is  
19 unconscionable in light of Defendant's knowledge that the Washing Machines  
20 contained a design defect and would likely fail during their useful life. Provisions  
21 limiting the time and/or scope of the limited warranty provided by Defendant are  
22 unconscionable because they would cause Defendant's limited warranty to fail of  
23 its essential purpose in that, *inter alia*, the Washing Machines contain a common  
24 design defect that was present at the time of purchase and Defendant knew, or was  
25 reckless in not knowing, about the defect and the defect could not be discovered  
26 by Plaintiff and members of the Class at the time of purchase. Defendant  
27 possesses knowledge, bargaining strength and power far superior to that of  
28 Plaintiff and members of the Class. Without discussion or negotiation, Defendant

Exhibit A Pg. 21

1 offers the limited warranty to its customers and such customers lack any  
2 meaningful choice with respect to warranty terms.

3 73. Defendant's conduct constitutes an intentional misrepresentation(s), deceit, and  
4 concealment of a material fact(s) known to Defendant with the intention on the part of Defendant  
5 of thereby depriving Plaintiff and members of the Subclass of property or legal rights or  
6 otherwise causing injury.

7 74. Pursuant to Civil Code § 1780(a)(2) and § 1782(d), Plaintiff and members of the  
8 Subclass seek injunctive relief as to Defendant's violation of the CLRA. Further, pursuant to  
9 California Civil Code §1780(a)(3), Plaintiff and members of the Subclass seek restitution of all  
10 amounts they have paid. Plaintiff and members of the Subclass further request this Court to  
11 award them their costs and reasonable attorney's fees, pursuant to California Civil Code §  
12 1780(d).

13 **Notice Pursuant to Civil Code § 1782**

14 75. Plaintiff hereby demands that within 30 days from service of this Complaint,  
15 Defendant correct, repair, replace or otherwise rectify the deceptive practices complained of  
16 herein for the entire subclass pursuant to California Civil Code §1770. Failure to do so will  
17 result in Plaintiff amending this Complaint to seek damages for such deceptive practices pursuant  
18 to California Civil Code §1782.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of Consumer Warranty Act, Civil Code § 1790 et. seq - As to All Defendants)**

21 76. Plaintiff hereby realleges and incorporates the above allegations by reference as if  
22 set forth fully herein.

23 77. The Washing Machines are "consumer goods" within the meaning of Civil Code  
24 §1791(a).

25 78. Defendant's express warranty and implied warranty of merchantability arose out  
26 of and/or were related to the sales of the Washing Machines.

27 79. The written warranty documents included with Defendant's Washing Machines  
28 constitute express warranties that Defendant refused and/or failed to honor.

Exhibit 1 Pg. 22

1           80. Defendant's written warranty stated that the Washing Machines were free of  
2 defects in materials and workmanship.

3           81. Defendant breached its express warranties, as set forth above, by supplying the  
4 Washing Machines in condition where they do not meet the warranty obligations undertaken by  
5 Defendant.

6           82. Defendant has received, upon information and belief, complaints and other notices  
7 from its customers nationwide advising Defendant of the defects in the Washing Machines,  
8 including from California residents.

9           83. Despite this notice and Defendant's knowledge, Defendant refuses to honor its  
10 warranty, even though it knows of the inherent defect in the Washing Machines.

11           84. As stated above, the imposition of the one (1) year term for the limited warranty in  
12 the face of Defendant's knowledge of a design defect at the time of purchase and that the  
13 Washing Machines would likely fail during their useful life was unconscionable. Applying the  
14 warranty limitation to limit the time and/or scope of the limited warranty provided by Defendant  
15 would be unconscionable and would cause Defendant's limited warranty to fail of its essential  
16 purpose in that, *inter alia*, the Washing Machines contain a common design defect that was  
17 present at the time of purchase and Defendant knew, or was reckless in not knowing, about the  
18 defect and the defect could not be discovered by Plaintiff and members of the Class at the time of  
19 purchase. Defendant possesses bargaining strength and power far superior to that of Plaintiff and  
20 members of the Class. Without discussion or negotiation, Defendant offers the limited warranty  
21 to its customers and such customers lack any meaningful choice with respect to warranty terms.

22           85. Defendant has been unable to conform the Washing Machines to the express  
23 warranty.

24           86. Further, the Washing Machines purchased by Plaintiff and the Class are not fit for  
25 the ordinary purposes for which such Machines are used because the defects, among other things,  
26 causes mold, mildew or similar residue to accumulate in the Washing Machines which produces  
27 mold and foul odors to escape from the Machines and to be on clothes and other items washed in  
28

1 the Machines, thereby seriously impairing the use and functionality of the machines in a manner  
2 which does not meet the expectations of Plaintiff or any other purchaser of the Machines.

3 87. Plaintiff and the Class have suffered damages as a result of Defendant's failure to  
4 comply with its warranty obligations and are entitled to recover damages pursuant to Civil Code  
5 §1791(d) and 1794.

6 **FIFTH CAUSE OF ACTION**

7 **Breach of Express Warranty-As to All Defendants**

8 88. Plaintiff hereby realleges and incorporates the above allegations by reference as if  
9 set forth fully herein.

10 89. The written warranty documents included with Defendant's Washing Machines  
11 constitute express warranties that Defendant refused and/or failed to honor.

12 90. Defendant's written warranty stated that the Washing Machines were free of  
13 defects in materials and workmanship.

14 91. Defendant breached its express warranties, as set forth above, by supplying the  
15 Washing Machines in condition where they do not meet the warranty obligations undertaken by  
16 Defendant.

17 92. Defendant has received timely notice of the breaches of warranty alleged herein  
18 pursuant to California Commercial Code § 2607(3)(A).

19 93. In addition, Defendant has received, upon information and belief, complaints and  
20 other notices from its customers nationwide advising Defendant of the defects in the Washing  
21 Machines, including from California residents.

22 94. Despite this notice and Defendant's knowledge, Defendant refuses to honor its  
23 warranty, even though it knows of the inherent defect in the Washing Machines.

24 95. As stated above, the imposition of the one (1) year term for the limited warranty in  
25 the face of Defendant's knowledge of a design defect at the time of purchase and that the  
26 Washing Machines would likely fail during their useful life was unconscionable. Applying the  
27 warranty limitation to limit the time and/or scope of the limited warranty provided by Defendant  
28 would be unconscionable and would cause Defendant's limited warranty to fail of its essential

Exhibit 1 Pg. 24



1 purpose in that, *inter alia*, the Washing Machines contain a common design defect that was  
2 present at the time of purchase and Defendant knew, or was reckless in not knowing, about the  
3 defect and the defect could not be discovered by Plaintiff and members of the Class at the time of  
4 purchase. Defendant possesses bargaining strength and power far superior to that of Plaintiff and  
5 members of the Class. Without discussion or negotiation, Defendant offers the limited warranty  
6 to its customers and such customers lack any meaningful choice with respect to warranty terms.

7 96. Defendant has been unable to conform the Washing Machines to the express  
8 warranty.

9 97. As a result of Defendant's breach of warranty, Plaintiff and the Class are entitled  
10 to, *inter alia*, repudiation of their agreements and repayment of the money they spent to purchase  
11 and/or repair their Washing Machines or actual damages equal to the diminished value of their  
12 defective Washing Machines.

13  
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the members of the Classes  
16 and Subclass defined herein, pray for judgment and relief on all Causes of Action as follows:

17 1. An order certifying that the action may be maintained as a class action as defined  
18 herein;

19 2. A temporary, preliminary and/or permanent order for injunctive relief requiring  
20 Defendant to undertake an immediate public information campaign to inform members of the  
21 proposed Class and the Subclass to their prior practices and notifying the members of the  
22 proposed Class and the Subclass as to the presence of potential restitutionary relief;

23 3. An order requiring imposition of a constructive trust and/or disgorgement of  
24 Defendant's ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to  
25 restore to the Plaintiffs and members of the Classes all funds acquired by means of any act or  
26 practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a  
27 violation of laws, statutes or regulations, or constituting unfair competition;  
28

1 4. Distribution of any moneys recovered on behalf of members of the Class via fluid  
2 recovery or *cy pres* recovery where necessary and as applicable, to prevent Defendant from  
3 retaining the benefits of their wrongful conduct.

4 5. Reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil  
5 Procedure §1021.5;

6 6. Costs of this suit;

7 7. Such other and further relief as the Court may deem necessary or appropriate.  
8

9 **JURY DEMAND**

10 Plaintiff demands a trial by jury as to all issues so triable.  
11

12 Dated: July 13, 2009

**WEISS & LURIE**

Jordan L. Lurie

Zev B. Zysman

Joel E. Elkins

13  
14  
15 By: 

Jordan L. Lurie

16 10940 Wilshire Boulevard, 23<sup>rd</sup> Floor

17 Los Angeles, CA 90024

18 Telephone: (310) 208-2800

19 Facsimile: (310) 209-2348

20 *Attorneys for Plaintiff*  
21  
22  
23  
24  
25  
26  
27  
28



AFFIDAVIT OF LESLEY KLEINMAN

I, LESLEY KLEINMAN, submit this affidavit pursuant to § 1780 (d) of the CAL. CIV.  
CODE, Consumers Legal Remedies Act, and declare the following:

1. I am the Plaintiff in the action captioned *Kleinman v. BSH Bosch Home  
Appliances Corporation, et. al.*

2. I am a resident of Los Angeles, California.

3. I am informed and believe that the Defendant in this action conducts substantial  
business activity in Los Angeles County and the transaction and wrongdoing complained of  
occurred in Los Angeles County and therefore this County is a proper place for trial of this  
action.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed this \_\_\_ day of July 2009, at Los Angeles,  
California.



LESLEY KLEINMAN

# EXHIBIT B

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 10/07/10

DEPT. 23

HONORABLE ZAVEN V. SINANIAN

JUDGE

I. AYALA

DEPUTY CLERK

HONORABLE  
#11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. LAM, C.A.

Deputy Sheriff

G. AMMON, CSR #5202

Reporter

8:35 am BC417680

Plaintiff No Appearance  
Counsel

LESLEY KLEINMAN

VS

Defendant James M. Hansen (X)  
Counsel Thomas M. Rutherford (X)

BSH HOME APPLIANCES CORPORATION

NON-COMPLEX (08-04-09)

**NATURE OF PROCEEDINGS:**

MOTION OF PLAINTIFF, LESLEY KLEINMAN, ON BEHALF OF  
HERSELF AND ALL OTHERS SIMILARLY SITUATED, FOR CLASS  
CERTIFICATON;

The motion is called for hearing.

Plaintiff fails to appear.

Plaintiff's written request that the case be dismissed  
is granted.

The case is ordered dismissed.

All future dates in this department are advanced and  
vacated.

Defendant states that they will submit a Judgment of  
Dismissal seeking costs against plaintiff.

The Court orders counsel to meet and confer regarding  
the form of the judgment prior to its submission.

# EXHIBIT C

Exhibit C Pg. 31

the plaintiffs' motions, and also moves to strike testimony of a plaintiff expert offered in support of the motion for class certification. The plaintiffs' motion to amend their complaint is denied. Sears' motion to strike the testimony of plaintiffs' expert is denied. The plaintiffs' motion for class certification is denied as to the proposed class of purchasers of washers suffering from the mold defect, and granted as to the proposed class of purchasers of washers suffering from the control unit defect. Plaintiffs' motion to sever is denied without prejudice to reconsideration of the motion as dictated by further proceedings.

#### Background

Beginning in 2001, Sears sold Kenmore-brand front loading, high efficiency washers manufactured by Whirlpool. The plaintiffs, each a purchaser of one of the machines, brought this action, seeking damages under federal and state law for two claimed defects. According to the plaintiffs, the wash cycles of front loading, high efficiency machines use less water overall and water heated to lower temperatures than the cycles of top-loading, standard efficiency machines. The plaintiffs allege that the lower volume of water and the lower water temperatures result in diminished cleansing of dirt and other wash residue from some internal sections of their machines. They further allege that this diminished cleansing, combined with the increased sealing of the wash tub door compared with top loading machines, produces an environment that results in the growth of bacteria and mold which ultimately creates odors that permeate the laundry washed in the machines and even the areas where the machines are located. The plaintiffs claim that this problem is inherent in the design of all of the Sears/Whirlpool front loading high efficiency washers.

The second claimed defect is alleged to have affected a more narrowly defined group of



machines. The parties do not dispute that all of the subject washers contain a "Central Control Unit" (CCU), an electronic processor that instructs the machines to start and stop its various functions. The plaintiffs claim that for machines manufactured from 2004 to 2007, the CCU was provided to Whirlpool by a third party supplier, Bitron. They further claim that Bitron's employees, while installing the CCU into its housing, sometimes damaged the circuit boards of the CCUs, causing them to generate error messages that interrupted normal functioning of the machines.

Before consolidation of their cases into this action, separate subgroups of the current group of plaintiffs filed complaints that asserted consumer fraud claims against Sears under various state statutes. The consumer fraud claims were dismissed by District Judge Joan H. Lefkow for failure to make sufficient, non-conclusory allegations. The plaintiffs were allowed to file amended complaints, and the consumer fraud claims were again dismissed, this time with prejudice. *See Munch v. Sears, Roebuck and Co.*, 2008 WL 4450307 (N.D. Ill. 2008); *Bettua v. Sears, Roebuck and Co.*, 2009 WL 230573 (N.D. Ill. 2009); and *Butler v. Sears, Roebuck and Co.*, 2009 WL 3713687 (N.D. Ill. 2009). Plaintiffs' remaining claims are federal and state law claims for breaches of express and implied warranties.

Plaintiffs' Motion For Leave To File An Amended Complaint

Plaintiffs seek leave to file an amended complaint which reasserts their consumer fraud claims. Permission of any such amendment following dismissal of their claims with prejudice would be contrary to the law of the case doctrine, which "reflects the rightful expectation of litigants that a change of judges mid-way through a case will not mean going back to square one." *Best v. Shell Oil Co.*, 107 F.3d 544, 546 (7<sup>th</sup> Cir. 1997). Although the law of the case

doctrine is not an absolute bar to a court's reconsideration of its own rulings or those of a different member of the same court, prior rulings should not be revisited in the absence of a "compelling" reason, such as manifest error or a change in the law. *Minch v. City of Chicago*, 486 F.3d 294, 301 (7<sup>th</sup> Cir. 2007).

No compelling reason for revisiting Judge Lefkow's rulings has been presented by the plaintiffs here. They contend that subsequent holdings by the Supreme Court (*Matrixx Initiatives, Inc. v. Siracusano*, – U.S. –, 131 S.Ct. 1309 (2011)) and the Seventh Circuit (*In re Text Messaging Antitrust Litigation*, 630 F.3d 622 (7<sup>th</sup> Cir. 2010)) establish the erroneous nature of the dismissals of the consumer fraud counts of their complaints.

This court does not share the plaintiffs' view. In *Matrixx*, the Supreme Court held that a plaintiff could sufficiently allege the failure to disclose materially adverse information about a drug product without alleging a statistically significant link between the product and an alleged harmful side effect. 131 S.Ct. at 1321-23. In contrast, the plaintiffs' consumer fraud claims in this case were not held to be inadequate because of a failure to allege a statistically significant number of washer problems, but because the only allegations supporting a consumer fraud claim were conclusory assertions that Sears was aware of a high problem rate with the washers. Judge Lefkow found that without some allegation of the comparison between problem rates for the subject washers and those of other machines, the plaintiffs had not sufficiently alleged that the problems were so common that Sears knew the machines were defective. *Butler*, 2009 WL 3713687 at \*5. Therefore, while *Matrixx* suggests that materiality can be sufficiently alleged in the absence of statistics, it does not suggest that the statistics provided by the plaintiff here were, by themselves, sufficient to state a consumer fraud claim, or that the other pleading deficiencies

noted by Judge Lefkow could no longer serve as the basis for a 12(b)(6) dismissal.

Plaintiffs' reliance on *In re Text Messaging* is similarly misplaced. In that case the Seventh Circuit clarified that the pleading standard required to survive a 12(b)(6) dismissal motion is a "nonnegligible probability," (630 F. 3d at 629) but it did not in any way suggest that allegations of raw numbers of problem products, without further context, were sufficient to state a claim that a manufacturer knew of a product defect that it should disclose to consumers.

Plaintiffs' additional arguments in support of its assertion of compelling reasons to disregard the law of the case doctrine are unpersuasive. They contend that discovery revealed facts that would now enable them to plead their consumer fraud claims with appropriate specificity. However, they do not suggest that these revelations occurred after Judge Lefkow's most recent dismissal of those claims in November 2009. They also argue that other plaintiffs in similar actions for the same defects in Whirlpool-manufactured washers in other jurisdictions have been allowed to pursue consumer fraud claims, and that an inconsistent ruling here would be unjust. In the court's view, such inconsistency is a possibility inherent in the pursuit of multiple actions in different jurisdictions, and does not constitute a compelling basis for reconsideration of the prior dismissals of the plaintiffs' consumer fraud claims.

Plaintiffs' motion for leave to file an amended complaint is therefore denied.

Defendant's Motion To Strike Opinions Of Plaintiffs' Expert

Plaintiffs supported their motion for leave to certify this proceeding as a class action with the opinion of an expert, R. Gary Wilson. It is undisputed that Wilson holds a doctorate degree in mechanical engineering and that he was employed by Whirlpool from 1976 to 1999, including tenure from 1997 to 1999 as its director of laundry technology.

According to Wilson, the subject washers are defective in design because their basic functional characteristics, including their use of lower water volumes at cooler temperatures than standard machines, makes them unable to rid themselves of residue in the normal wash and rinse cycles and makes them incubators for the growth of bacteria and mold. Wilson concluded that the core design of all of the Whirlpool-built front loading high efficiency washers is defective, without regard to any changes made to individual models to attempt to mitigate the problem.

It is undisputed that Wilson inspected fewer than 20 washers in total, that most of the washers he inspected were from a group of machines known to have mold problems, and that he did not evaluate the impact of model changes made by Whirlpool to address those problems. Sears contends that his opinions must be excluded because they were based upon insufficient facts and because they were not produced by reliable, scientifically valid methods.

An expert's testimony is not unreliable simply because it is founded on his experience rather than on data. *Metavante Corp. v. Emigrant Savings Bank*, 619 F.3d 748, 761 (7<sup>th</sup> Cir. 2010). An expert knowledgeable about a particular subject need not be precisely informed about all details of the issues raised in order to offer an opinion. *Thomas J. Kline, Inc. v. Lorillard, Inc.*, 878 F.2d 791 (4<sup>th</sup> Cir. 1989). Here, Wilson's knowledge of and experience with washing machine design is not questioned. The value of Wilson's testimony is not based upon his sampling methods; it is instead based upon his knowledge of washer technology and his understanding of the principles that generally keep machines functionally clean, as well as the extent to which the subject machines depart from those principles. In the court's view, Wilson is clearly qualified to use his knowledge of those principles to offer an opinion, for purposes of a class certification motion, that all front loading high efficiency machines are similarly defective

in design. The fact that his opinion does not account for mitigating model changes that do not alter the machines' basic design is relevant to the weight to be assigned to his opinion, but does not indicate that the opinion is inadmissible in support of the certification motion.

Sears' motion to exclude Wilson's opinion is therefore denied.

Class Certification - Machines With Mold Problems

An action may be certified as a class action if the putative class satisfies all four requirements of Federal Rule of Civil Procedure 23(a) - numerosity, commonality, typicality, and adequacy of representation - and any one of the conditions of Rule 23(b). *Siegel v. Shell Oil Co.*, 612 F.3d 932, 935 (7<sup>th</sup> Cir. 2010).

Plaintiffs represent that the subject washers have been sold in several states for many years, and Sears does not deny that the number of potential members of the putative class is sufficiently large to make class action certification appropriate. Plaintiffs also assert, without dispute from Sears, that they and their counsel would be adequate representatives of the class.

Sears argues that the named plaintiffs are not typical of the class they purport to represent because they did not notice odor problems, did not consider them significant, or were not sufficiently troubled by them to report them to Sears within the warranty period. A plaintiff's claim is typical for purposes of Rule 23(a) analysis "if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Keele v. Wexler*, 149 F.3d 589, 595 (7<sup>th</sup> Cir. 1998), quoting *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7<sup>th</sup> Cir. 1983). Typicality may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members. *Muro v. Target Corp.*, 580 F.3d 485, 492 (7<sup>th</sup> Cir. 2009). In the



present case, even though plaintiffs may have suffered or noticed mold problems to different degrees, their claims are all based upon the same course of Sears conduct: the sale of a washer type that is alleged to be unduly prone to the problem. The court therefore concludes that the named plaintiffs' claims are typical of those of the class they seek to represent.

The court similarly concludes that the plaintiffs satisfy the commonality requirement of Rule 23(a)(2). To meet that requirement, "[i]t is enough that there be one or more common questions of law or fact." *Spano v. The Boeing Co.*, 633 F.3d 574, 585 (7<sup>th</sup> Cir. 2011). Whether the subject washers were uniformly defective in design, and whether their sale violates Sears' warranties are questions that are apparently common to all members of the class, thus satisfying the rule.

More problematic for the plaintiffs, however, is the requirement of Rule 23(b)(3): that questions of law or fact common to class members "predominate over any questions affecting only individual members." A determination of whether questions common to class members predominate begins with the elements of the underlying cause of action and an analysis of whether they can be resolved on a common, classwide basis. *Erica P. John Fund, Inc. v. Halliburton Co.*, — U.S. —, 131 S.Ct. 2179, 2184 (2011).

Plaintiffs' complaint alleges that Sears did not have solutions that would resolve the design defects that created the mold problem, and that it continued to sell the machines despite its knowledge of the problem and of the inadequacy of its proposed remedies. "Sears is aware that the Mold Problem is caused *inter alia*, by the inability of the Machine to clean itself following a wash cycle and that none of the proposed solutions Sears has offered Plaintiffs and the Class members will adequately remedy the defect." Amended Consolidated Class Action

Complaint, Docket #162, par. 37. “Sears has long known that the Washing Machines suffer from a self-cleaning defect and do not perform as intended, because they are susceptible to and likely to experience Mold Problems as a result of *inter alia*, the water drainage defect, which Sears has been, and continues to be, unable to remedy.” Id. at par. 43. The plaintiffs’ allegations thus establish as central issues Sears’ failure to fix the mold problem and its knowledge that the problem had not been and could not be fixed.

In response, Sears has produced evidence of numerous model changes that were aimed at fixing the mold problem, including problem areas identified by the plaintiffs’ expert. One such change was a smoothing of the inside surface of the washer’s water tub, eliminating crevices where mold could more easily evade rinse water. A second identified problem area was a metal cross piece component, which, according to plaintiffs’ expert, also had crevices which promoted mold growth and which contained a level of copper that promoted corrosion. Sears produced un rebutted evidence that this piece was also smoothed in later models and that its copper content was reduced to lower the corrosion risk. Sears contends that these changes from model to model reduced any mold problems that the machines had. Declaration of Anthony Hardaway, Docket #231, Attachment 8, pars. 41-43

The plaintiffs do not offer any evidence suggesting that they assessed the impacts of any of these changes, and their expert’s testimony indicates that he did not attempt to calculate any of those impacts in determining that the machines were defective in design, without regard to any later attempts to remedy the mold problem. The plaintiffs identify internal Whirlpool documents that characterize the problem as extending across all front loading high efficiency platforms, but these documents predate the model changes that, according to Sears, fixed the

problem.

In the court's view, the issues raised by the effect of the washer modifications and the extent of Sears' knowledge across multiple product iterations cannot be answered on a basis as wide as the class defined by the plaintiffs' certification motion. If the washer model changes had any impact on the problem, the extent to which Sears continued to sell a defective washer and the extent of its knowledge of a continued problem are questions whose answers will differ from model to model.

Plaintiffs argue that the efficacy of such changes is an issue to be decided on the merits of their claim, and that their assertion of a design defect that defies all attempted remedies was sufficient to allow similar claims to be certified as a class action in a proceeding in the United States District Court for the Northern District of Ohio. The court notes that in the Seventh Circuit, preliminary inquiries into the facts and merits are appropriate in reviewing the predominance of common issues for certification purposes. *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676-77 (7<sup>th</sup> Cir. 2001).

The model-specific issues regarding the washer modifications and Sears' knowledge of ongoing problems, in this court's view, outweigh the mold problem issues that can be resolved on a class-wide basis. See *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1018-19 (7<sup>th</sup> Cir. 2002). The party seeking class certification bears the burden of demonstrating that each of the elements required for certification are present. *Retired Chicago Police Association v. City of Chicago*, 7 F.3d 584, 596 (7<sup>th</sup> Cir. 1993). The court concludes that this burden has not been met for the mold problem class, and accordingly denies the plaintiffs' motion to certify that class.

Class Certification - Machines With Control Unit Problems

As in its response to plaintiffs' motion to certify the mold problem class, Sears does not dispute plaintiffs' assertion of the presence of the Rule 23(a) factors of numerosity and adequacy of representation for certification of the proposed control unit class. The common class questions that satisfied the rule's moderate commonality requirement for purposes of the proposed mold problem class achieve the same result for this proposed class.

Unlike the proposed mold problem class, the claimed predominance of common issues is not lessened by model-specific differences within the control unit class. This proposed class is limited to an identified production period during which control units from a single supplier were installed by a unique process. The parties do not dispute that washers with the Bitron control unit in question are readily identifiable by serial number, and Sears does not suggest that it employed remedies that solved the problem before the end of the production run of the washers in the proposed class. Although Sears does contend that individual issues predominate over the potential common issues in this proposed class, the court finds that the individual issues identified by Sears do not outweigh the common issues raised by this class.

Sears also argues that the proposed control unit class is fatally over-inclusive because, according to its records, the vast majority of its customers suffered no control unit issues, and because the issues that did occur were not demonstrated to have been caused by the same defect. The court considers Sears' assertions on this issue to be evidence of the problems for which it received a customer complaint rather than a demonstration of the over-inclusive definition of the class. At this stage, it is not clear that the proposed class includes many members who were not

injured by alleged control unit defect, so Sears' assertions of overbreadth are not a basis for denial of certification.

The court finds that the proposed control unit class meets the requirements of Rule 23(a), that questions of law and fact common to members of the class predominate over questions affecting only individual class members, and that a class action is superior to other methods for fairly and efficiently adjudicating the issues of Sears' liability for the alleged control unit problems. Plaintiffs' motion for certification of a control unit class is therefore granted.

#### Plaintiffs' Motion To Sever

Plaintiffs ask that, for reasons of judicial economy, their control unit class claims be severed from their mold problem claims. Since the scope and direction of remaining proceeding have not yet been determined, the court considers this motion to be premature, and accordingly denies the motion without prejudice to its reassertion later in the proceedings.

#### Conclusion

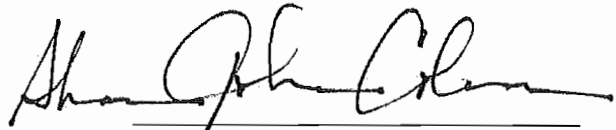
The plaintiffs' motion for leave to file an amended complaint is denied. Sears' motion to exclude the opinions of the plaintiffs' expert is denied. The plaintiffs' motion for certification of a class of purchasers of machines with mold problems is denied. The plaintiffs' motion for certification of a class of all persons or entities who purchased, not for resale, a front-load



washing machine manufactured from 2004 to 2007 with a Bitron CCU, in the states of California, Indiana, Illinois, Kentucky, Minnesota and Texas is granted. The plaintiffs' motion to sever is denied without prejudice.

So ordered.

September 30, 2011

A handwritten signature in black ink, appearing to read "Sharon Johnson Coleman", written over a horizontal line.

Sharon Johnson Coleman  
District Judge

# EXHIBIT D

Exhibit D Pg. 44

IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

Plaintiffs,

V.

Defendant.

CASE NO.: CV-10-5163-R-(JEMx)

ORDER DENYING  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION

Date: January 3, 2011  
Time: 10:00 am  
Courtroom: 8

Hon. Manuel L. Real  
Action Filed: July 14, 2010

1 Before the Court is Plaintiffs' Motion for Class Certification under Rule  
2 23 of the Federal Rules of Civil Procedure. After reviewing the moving, opposition  
3 and reply papers, and hearing counsel's additional oral argument, the Court holds as  
4 follows:

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6 The burden is on the party seeking certification to establish a prima  
7 facie showing of each requirement under Rule 23(a) and an appropriate ground for  
8 certification under Rule 23(b). *Zinser v. Accufix Res. Inst., Inc.*, 253 F.3d 1180, 1186  
9 (9th Cir. 2001). The motion to certify is denied because Plaintiffs failed to discharge  
10 their burden under Rule 23(b)(3) and Rule 23(b)(2) is inapplicable in the instant case.

11 Rule 23(b)(3) incorporates a requirement of manageability as part of the  
12 superiority element. *See* Fed. R. Civ. P. 23(b)(3)(D). It is not manageable to hold  
13 one trial involving seven separate states' consumer protection and warranty laws.  
14 *Woodard v. Fidelity National Title Insurance Co.*, 2008 U.S. Dist. LEXIS 108411  
15 (D.N.M. Dec. 8, 2008); *Haley v. Medtronics, Inc.*, 169 F.R.D. 643 (C.D. Cal. 1996).  
16 Plaintiffs allege that "the elements of each of these claims for each state are  
17 remarkably similar." But Plaintiffs provide no case-law, statutes, or in-depth  
18 discussion demonstrating the supposed similarities among the states' laws with  
19 respect to Plaintiffs' warranty and consumer protection claims. As stated in *Kennedy*  
20 *v. Natural Balance Pet Foods*, 2010 WL 55554, at \*1 (9th Cir. 2010) (quoting *Zinser*  
21 253 F.3d 1188-89), a class action plaintiff is required to provide a thorough analysis  
22 of the applicable state laws where – as here – different states' laws would apply to  
23 the claims at issue. Plaintiffs here have not met that burden.

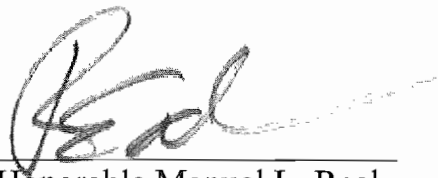
24 Finally, Rule 23(b)(2) is inapplicable in this action because the  
25 predominant relief Plaintiffs seek is monetary, not injunctive or declaratory. *Molski*  
26 *v. Gleich*, 318 F.3d 937, 947 (9th Cir. 2003).

1                   **NOW THEREFORE:** Plaintiffs' Motion for Class Certification is  
2 **DENIED.**

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4                   **IT IS SO ORDERED.**

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6 Dated: January 19, 2011

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The Honorable Manuel L. Real

Respectfully submitted by

/s/ Darrel J. Hieber

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Attorneys for Defendant

ELECTROLUX HOME PRODUCTS, INC.



# Exhibit E

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LOS ANGELES

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9 Counsel for Plaintiffs and the Class

10  
 11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 GLENN AND DEIRDRE DICKERSON, ) Case No. CV10-5163R(JEMx)  
 14 TAMMY FOX-ISICOFF, JOHN AND )  
 15 SAMANTHA EDDY, GARY FRUTKOFF, )  
 16 DANIEL AND SHELENA HUNTER, ) **FIRST AMENDED CLASS ACTION**  
 17 CHARLES AND ROSEMARY OVERLY; ) **COMPLAINT**  
 18 STEVE AND JENNIFER SCHRODER, AND )  
 19 ISAAC AND GAIL WALKOVER, individually )  
 20 and on behalf of all others similarly situated, ) [Jury Trial Demanded]  
 21  
 22 PLAINTIFFS, )  
 23  
 24 vs. )  
 25  
 26 ELECTROLUX HOME PRODUCTS, )  
 27 INCORPORATED, )  
 28  
 29 DEFENDANT. )

BY FAX

30  
 31 Plaintiffs Glenn and Deirdre Dickerson, Tammy-Fox Isicoff, John and Samantha Eddy;  
 32 Gary Frutkoff, Daniel and Shelena Hunter, Charles and Rosemary Overly, Steve and Jennifer  
 33 Schroder, and Isaac and Gail Walkover (jointly referred to as "Consumer Representatives") by and  
 34 through their undersigned counsel, individually and on behalf of all others similarly situated ("The  
 35 Class" or the "Class" (The Class and Consumer Representatives jointly are referred to as  
 36 "Plaintiffs")), allege the following facts and claims upon personal knowledge and upon  
 37 information and belief as to all other matters as follows:

38 0  
 39 FIRST AMENDED CLASS ACTION COMPLAINT

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### JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. §1332(d)(2) because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, the proposed Classes consist of more than 100 members, and this is a class action in which the members of the proposed Classes and Defendant are citizens of different states.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims took place within this district.

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### INTRODUCTION

3. Plaintiffs bring this class action on behalf of themselves and all others similarly situated against Defendant, Electrolux Home Products Incorporated ("Defendant" or "Electrolux" or "EHP"), seeking damages, restitution, a constructive trust, and injunctive relief for the proposed Classes as defined herein.

4. This action is brought to remedy violations of law in connection with Defendant's design, manufacture, sales, performance, servicing and warranting of its Horizontal Axis/Front-Loading Automatic Clothes Washers, including, but not limited to, Crosley, Electrolux, Frigidaire, and White-Westinghouse branded machines (hereinafter collectively referred to as "Washing Machine(s)" or "Machine(s)"). The Crosley, Electrolux, Frigidaire, and White-Westinghouse Washing Machines' relevant design, parts, pieces, operation and materials are the same. There are no differences in the Washing Machines that relate to, arise from, or are relevant to the cause or effect of the Defects (defined below) at issue in this case.

5. The North American washing machine market today is comprised of both vertical (top-loading) and horizontal axis (front-loading) washing machines. Historically, North American consumers purchased vertical axis washing machines, which as part of their operation clean and rid themselves of suds, detergent, softener, waste water, and bioorganic material; as a result of the

1 foregoing, vertical axis machines effectively clean themselves of the stated materials ("Self-  
2 Clean"). American Consumers' Washing Machine expectations, habits and practices are based on  
3 decades of using vertical axis washing machines that effectively Self Clean. The Washing  
4 Machines do not effectively Self Clean, but instead cause Biofilm (defined below) to be deposited  
5 throughout the Washing Machines, which foster and cause bioorganic material to develop inside of  
6 them and emit Foul Odors (defined below).

7 6. The Foul Odors are proof of the actual problem; the Washing Machines fail to Self  
8 Clean. As a result, detergent, fabric softeners, suds, skin, hair, oils, soils, and lint combine to form  
9 a filmy substance referred to as "Biofilm" that develops within the Washing Machines in places  
10 where consumers cannot remove it. Bacteria, mold, fungus, and bioorganic material feed and grow  
11 on and become incorporated into the Biofilm ("Mold Problem") and within a short time after being  
12 put to use the Washing Machines have Biofilm and the Mold Problem which produce offensive  
13 odors experienced by Plaintiffs ("Foul Odors").

14 7. Mold, according to the Federal Centers for Disease Control and Prevention, can cause  
15 symptoms that include nasal stuffiness, eye irritation, wheezing, skin irritation, fever, and shortness  
16 of breath. For people with chronic lung illnesses, mold infections can develop in their lungs, and  
17 exposure to mold can also bring on asthma attacks. Molds grow best in warm, damp, and humid  
18 conditions, and spread and reproduce by making spores. Mold spores can survive harsh  
19 environmental conditions, such as dry conditions, that do not support normal mold growth. The  
20 spores can also survive bleach and hot water cleaning cycles.

21 8. Electrolux did not, and does not provide, either prior to or at the time of purchase, any  
22 information to the Representative Consumers or the Class members regarding the Washing  
23 Machines' Defects and propensity to accumulate Biofilm and develop Foul Odors and the Mold  
24 Problem.

25 9. The Washing Machines' many Defects, cause Biofilm to accumulate inside the  
26 Machines, and development of the Mold Problem which leads to Foul Odors even when the  
27 Machines are used and maintained as recommended by Electrolux. These many Defects include,

1 among other things, the failure of the Washing Machines to: 1) properly drain water and to  
2 evaporate, dissipate and eliminate lingering heat, humidity, and moisture following a wash cycle;  
3 2) sufficiently remove during the wash cycles, detergent, fabric softener, lint, oils, suds, and soils  
4 to prevent the development and accumulation of Biofilm on different parts of and surfaces within  
5 the Washing Machines, including (a) on the Tub (defined below), b) the Basket (defined below), c)  
6 the Basket Support Arm (defined below), d) the area near and around the sump and pump  
7 components, e) detergent and softener dispenser, f) hoses and tubing and g) the gasket which is  
8 located between the Basket and the Washing Machine door and which retains water and moisture  
9 following the completion of the Washing Machines' cycles; 3) prevent the accumulation of  
10 Biofilm, which contributes to the Mold Problem when detergent and fabric softener are used in the  
11 amounts instructed and recommended by Defendant; 4) have dispenser compartments that: i)  
12 communicate the amount of detergent and fabric softener that consumers should use, or ii) prevent  
13 consumers from using too much detergent or fabric softener; 5) have materials made with  
14 sufficient or appropriate anti-microbial additives to prevent or reduce the growth of bioorganic  
15 matter that develops and lives on parts of the Washing Machines that come in contact with wash  
16 water and/or wash waste water; 6) revert the air in the interior of the Tub (defined below) and  
17 Basket (defined below) to the ambient humidity of the room in which the Washing Machines are  
18 located within sufficient time following a wash cycle; and 7) clean themselves of Biofilm and the  
19 Mold Problem, including, but not limited to, the parts described in (2)(a-g) of this paragraph. (The  
20 defects described in paragraph 9 (1-7) are cumulatively hereafter referred to as the "Defects.")

21 10. As a result of these enumerated failures, the Washing Machines do not satisfy the  
22 purpose for which they were purchased; i.e. to clean clothes, towels, bedding, and other washable  
23 items (hereinafter collectively referred to as "Clothes") and make Clothes smell fresh and clean.

24 11. Plaintiffs assert claims on behalf of themselves and a series of subclasses, stated  
25 below, for violations of consumer protection statutes, warranty laws, and unjust enrichment for the  
26 following states: California, Florida, Maryland, Michigan, New York, Oregon, Pennsylvania, and  
27 Texas.



1 THE PARTIES

2 Plaintiffs

3 12. Consumer Representatives Deirdre and Glenn Dickerson ("Dickersons") are citizens  
4 of Texas and reside in Houston, Texas. On or about October 20, 2008, Deirdre and Glenn  
5 Dickerson purchased an Electrolux Washing Machine (Model No. EWFLW65HIW) from Sara  
6 Appliances & Electronics located in Houston, Texas. Within several months of owning and  
7 operating the Machine under normal household conditions, and as recommended by Electrolux, the  
8 Washing Machine accumulated Biofilm and developed Foul Odors and the Mold Problem. The  
9 Dickersons complained to Electrolux about the Foul Odors and Mold Problem, but Electrolux  
10 simply recommended that they run more frequent bleach and hot water cycles. The Dickersons'  
11 Machine continues to have Biofilm, Foul Odors, and the Mold Problem.

12 13. Consumer Representative Tammy Fox-Isicoff ("Ms. Fox Isicoff") is a citizen of  
13 Florida and resides in North Miami Beach, Florida. In June 2009, Ms. Fox-Isicoff purchased a  
14 new Electrolux Washing Machine (Model No. EIFLW55HIW0; Serial No. 4C92100358) from a  
15 Sears store in Miami, Florida. Within approximately three months after beginning use of the  
16 Machine, it began emitting Foul Odors as well as accumulating Biofilm and microbial growth on  
17 the door gasket. Ms. Fox-Isicoff complained to Electrolux about the Foul Odors, Biofilm, and  
18 microbial growth, but an Electrolux representative told her that the mold growth on the gasket of  
19 her Machine was not covered under the Warranty (defined below). Eventually, on April 27, 2010  
20 Electrolux replaced her door gasket, with the same gasket that was originally installed in the  
21 Machines, at no charge (although the service technician left her a receipt stating that the value of  
22 the gasket and services performed was \$264.74). Ms. Fox-Isicoff runs weekly cleaning cycles  
23 using bleach, dries the interior of her Machine, and leaves the Machine door open between uses;  
24 however, Ms. Fox-Isicoff's Machine continues to have Biofilm, Foul Odors, and the Mold  
25 Problem. Plaintiffs' counsel, along with their expert, and in the presence of Electrolux's expert,  
26 disassembled Ms. Fox-Isicoff's Machine on July 15, 2010. The disassembly revealed microbial  
27 growth in the Tub (defined below), the sump area, the detergent dispenser-Tub interface, the drain

1 hose, as well as other areas. Sampling of the microbial growth confirmed the presence of mold  
2 and/or bacteria on these parts.

3 14. Consumer Representatives John and Samantha Eddy ("Eddys") are citizens of  
4 Maryland, and reside in Waldorf, Maryland. On or about April 1, 2008 the Eddys purchased a new  
5 Frigidaire Affinity Washing Machine (Model No. ATF6700FS1; Serial No. XC81008628) from a  
6 Sears store in Waldorf, Maryland. Within three to four months of owning and operating the  
7 Machine under normal household conditions, and as recommended by Electrolux, the Washing  
8 Machine accumulated Biofilm, and developed Foul Odors and the Mold Problem. On February 6,  
9 2009 the Eddys' Machine's door gasket was replaced under Electrolux's warranty in response to  
10 due to a leak. On November 24, 2009, the Eddys had their detergent dispenser tray replaced under  
11 Electrolux's warranty. At the time of the Sears technician's visit to replace the dispenser tray, the  
12 Eddys complained of Biofilm, the Foul Odors and the Mold Problem. The technician declined the  
13 Eddys' request to repair or replace the Machine for defects in materials and workmanship that are  
14 causing Biofilm, Foul Odors and the Mold Problem, and suggested that they use a product called  
15 Washer Magic to clean their Machine. The Eddys used Tide Washing Machine Cleaner, Affresh,  
16 several bottles of Washer Magic as well as other Extraordinary Actions (defined below) to try to  
17 clean their Machine, but their Machine continued to accumulate Biofilm, and experience Foul  
18 Odors and the Mold Problem. On July 1, 2010, the Eddys complained directly to Electrolux about  
19 the accumulation of Biofilm, Foul Odors and the Mold Problem. Without explanation, Electrolux  
20 sent the Eddys a new door gasket free of charge. Electrolux did not provide the labor to remove  
21 and replace the door gasket.

22 15. Consumer Representative Gary Frutkoff ("Mr. Frutkoff") is a citizen of California  
23 and resides in Venice, California. On or about May 6, 2008, Plaintiff Frutkoff purchased a new  
24 Frigidaire Affinity Washing Machine (Model No. ATF8000FS; Serial No. C74408683) from  
25 Carlsons Appliances, Inc., in Venice, California. Within several months of owning and operating  
26 the Washing Machine under normal household conditions, and as recommended by Electrolux, the  
27 Washing Machine accumulated Biofilm, and developed Foul Odors and the Mold Problem. Mr.  
28 Frutkoff gave notice to Electrolux about accumulation of Biofilm, Foul Odors, and the Mold

1 Problem. Electrolux sent Mr. Frutkoff a replacement door gasket, but refused to pay for or provide  
2 the labor needed to replace the original gasket. As a result, Mr. Frutkoff removed his moldy gasket  
3 and installed the new gasket himself. Mr. Frutkoff provided Electrolux with pre-suit notice of his  
4 problems with Biofilm, Foul Odors and the Mold Problem in his Machine and has had to undertake  
5 the Extraordinary Actions (defined below) Electrolux recommended to him. Despite performing  
6 the Extraordinary Actions, Mr. Frutkoff's Washing Machine continues to have Biofilm, Foul  
7 Odors and the Mold Problem.

8 16. Consumer Representatives Daniel and Shelena Hunter ("Hunters") are citizens of  
9 Oregon and reside in Damascus, Oregon. On or about September 12, 2008, the Hunters purchased  
10 a new Crosley Washing Machine (Model No. CFW4000FW, Serial No. XC82815114) from  
11 Gassman Appliance Repair in Boring, Oregon. The Hunters first noticed Foul Odors within one  
12 year of the filing of this Complaint. The Hunters' Machine continues to have Biofilm, Foul Odors,  
13 and the Mold Problem.

14 17. Consumer Representatives Charles and Rosemary Overly ("Overlys") are citizens of  
15 Pennsylvania and reside in Scottdale, Pennsylvania. On or about September 22, 2008 the Overlys  
16 purchased a new Crosley Washing Machine (Model No. CFW4000FW; Serial No. XC82403006)  
17 from Chroma TV & Appliances in Connellsville, Pennsylvania. The Overlys began noticing Foul  
18 Odors emanating from their Washing Machine and mold appearing on their door gasket within  
19 three-to-four weeks of first using the Machine. The Overlys immediately complained about the  
20 Foul Odors and Mold Problem to Chroma TV and Appliances who in response sent a technician  
21 from Hyatt Appliance to inspect their Machine in November of 2008. The technician merely  
22 advised the Overlys to keep the Machine door open and wipe dry the rubber gasket. The Foul  
23 Odors persisted and the Overlys complained directly to Electrolux regarding the Foul Odors and  
24 the Mold Problem multiple times during the first year of using the Machine. In response to the  
25 Overlys' complaints, Electrolux advised the Overlys to run an empty hot water cycle with bleach  
26 once per week. In April of 2009, Electrolux replaced the Overlys' door gasket. Despite  
27 employing the Extraordinary Actions, including wiping dry the gasket after use, running empty hot  
28 water and bleach cycles on a weekly basis, and leaving the door open between cycles, the Overlys'

1 Washing Machine continued to accumulate Biofilm, emit Foul Odors, and experience the Mold  
2 Problem. Mold reappeared on the new door gasket within two months of being installed. The  
3 continued Foul Odors and Mold Problem plaguing the Overlys' Machine and the failure of  
4 Electrolux to honor its warranty obligations caused the Overlys to cease using their Washing  
5 Machine on or about August 13, 2010 and incur the cost of a replacement washing machine.

6 18. Consumer Representatives Steve and Jennifer Schroder ("Schroders") are citizens  
7 of Michigan and reside in Grand Rapids, Michigan. On or about November 7, 2007, the Schroders  
8 purchased a new Crosley Washing Machine (Model No. CFW4000FWO; Serial No. XC71719216)  
9 from Rosenberg Hardware in Grant, Michigan. The Schroders began noticing Foul Odors  
10 emanating from their Washing Machine within the first year of using their Machine. Shortly  
11 thereafter, the Schroders discovered mold growing on the Machine's door gasket. The Schroders'  
12 Machine continues to accumulate Biofilm, have the Mold Problem, and emit Foul Odors.

13 19. Consumer Representatives Isaac and Gail Walkover ("Walkovers") are citizens of  
14 New York and reside in Woodmere, New York. On or about July 16, 2008, the Walkovers  
15 purchased a new Frigidaire Gallery Washing Machine (Model No. GLTF2940FE1; Serial No.  
16 XC82909918) from P.C. Richard & Son in Rockville Centre, NY. Within several months of using  
17 the Machine, the Walkovers noticed a musty smell emanating from the Machine and discovered  
18 mold growing on their Machine's door gasket. The Walkovers contacted Electrolux and explained  
19 the problem. An Electrolux representative stated that Electrolux has received many similar  
20 complaints about Foul Odors and the Mold Problem, but that Electrolux would not fix the Machine  
21 under warranty and that repeated bleach cleanings were the only solution. Despite running  
22 repeated bleach cycles, wiping dry the gasket and interior of the Machine, and leaving the Machine  
23 door open between washes, the Walkover's Machine continues to accumulate Biofilm, have the  
24 Mold Problem, and emit Foul Odors.

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1 **Defendant**

2 20. Electrolux Home Products Incorporated is a Delaware corporation and maintains its  
3 principal place of business at 250 Bobby Jones Expressway, Martinez, Georgia 30907. EHP  
4 designs and manufactures the Washing Machines in its Webster City, Iowa and Juarez, Mexico  
5 facilities. According to the Electrolux Group 2009 Annual Operating Report, the Webster City  
6 facility is scheduled to be closed, and production of laundry appliances is to be consolidated in  
7 Juarez, Mexico sometime in 2011. The Webster City facility has the capacity to produce 1.5  
8 million Machines per year.

9 21. North American corporate office operations for EHP are in the process of being  
10 consolidated to a new headquarters in Charlotte, North Carolina.

11 22. EHP is a subsidiary of Electrolux Group which is based in Sweden and is the  
12 second-largest appliance manufacturer in the world.

13  
14 **FACTUAL BACKGROUND**

15 23. Defendant is in the business of manufacturing, producing, distributing, and/or  
16 selling front-loading Washing Machines throughout the United States under the brand names  
17 Crosley, Electrolux, Frigidaire, and White-Westinghouse. The Washing Machines sold under  
18 these brands are substantially identical, and Plaintiffs are informed and believe the brands of the  
19 Washing Machines are and were manufactured in the same facilities.

20 24. Electrolux manufactured, produced, and/or distributed Washing Machines for sale  
21 by its network of authorized dealers including several leading retailers in the United States, such as  
22 ABT, Best Buy, Lowe's, Pacific Sales, Sears, and other large retail chains, as well as through  
23 independently-owned distributors.

24 25. According to the 2009 Annual Report posted on Electrolux Group's website,  
25 Frigidaire-branded products are sold in the low-price and mass market segments of the appliance  
26 market, and Electrolux-branded products are sold in the premium segment of the appliance market.

27 26. White-Westinghouse is a brand named used by Electrolux to market and sell  
28 Machines. Electrolux sells appliances under this brand in more than 45 countries. The White-



1 Westinghouse models are identical to the lower-priced Frigidaire branded Machines. For example,  
2 White-Westinghouse model WTF330HS is identical to Frigidaire model FTF530FS, with the  
3 exception of being branded with as a White-Westinghouse appliance.

4 27. Crosley Group Incorporated ("Crosley") is a regional distribution organization that  
5 consists of independently-owned distributors of home appliances and electronics such as washing  
6 machines, dryers, ranges, microwave ovens, dishwashers, air conditioners, refrigerators, and  
7 televisions. It was established to help independent distributors and retailers compete in the  
8 marketplace with "quality appliances at affordable prices." Crosley is not a manufacturer. All of  
9 Crosley's appliances are manufactured by large appliance manufacturers and sold through  
10 independent appliance retailers through a network of over 15,000 outlets. Crosley Washers are  
11 manufactured by Electrolux, using Frigidaire models, and by LG of Korea. In addition to  
12 designing, assembling and manufacturing the Crosley brand Machines, Electrolux labels the  
13 Machines with "Crosley" badges, drafts the Operating Instructions for the Crosley badged  
14 Machines, makes the Operating Instructions available through its Frigidaire internet website  
15 (<http://www.frigidaire.com/manuals>), issues the warranty that covers the Crosley branded washers,  
16 provides warranty service and replacement parts, provides a 1-800 telephone number in the  
17 Operating Instructions which is the phone number of Electrolux's Frigidaire warranty and service  
18 call center, and introduces the Washing Machines into the stream of commerce. Electrolux also  
19 services and repairs its Crosley branded Machines when they are recalled, such as those that were  
20 recently recalled for a fire hazard.

21 28. The Crosley branded Machines are identical to the Frigidaire Machines with the  
22 exception of being branded with a Crosley badge or label instead of the Frigidaire badge or label.  
23 Identical models include, but are not limited to, Crosley model numbers CFW4000FW,  
24 CFW5000FW, CFW4000FW, CFW4500KW, CFW7500KB, CFW7500KR, and CFW2000FW.

25 29. Upon information and belief, Plaintiffs allege that Crosley is an agent of Electrolux  
26 Home Products, Inc.

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28 ///

1 **Breach of Express and Implied Warranties**

2 29. EHP provides express written warranties for Crosley, Electrolux, Frigidaire, and  
3 White-Westinghouse branded Machines, sold in the United States, against defects in materials and  
4 workmanship through its Electrolux Major Appliances North America, Incorporated division.

5 30. Electrolux also warrants that Crosley, Electrolux, Frigidaire, and White-  
6 Westinghouse Machines will operate properly and without Defects, and actually wash and make  
7 Clothes clean and clean smelling, or at the very least, odor free (both express written warranties  
8 and representative warranties will hereinafter be referred to as "Warranty" or "Warranties").

9 31. Electrolux warrants Electrolux Machines, under its Platinum Star Warranty, for two  
10 years from the original date of purchase against defects in materials and workmanship. During the  
11 first year Electrolux will repair or replace any parts that prove to be defective in materials or  
12 workmanship. In the second year of the warranty period Electrolux will pay for parts needed for  
13 the Machine that have proven to be defective in materials and workmanship. A copy of the  
14 Electrolux Platinum Star Warranty for Electrolux Machines is attached hereto as Exhibit "1".

15 32. Electrolux also warrants that "[e]very Electrolux Major Appliance is guaranteed to  
16 be free of material defects or component malfunctions."  
17 (<http://www.electroluxappliances.com/starwarranty>).

18 33. Electrolux warrants Frigidaire Machines for one year from the original date of retail  
19 purchase against defects in materials and workmanship. Electrolux warrants that it will pay all  
20 costs for repairing or replacing any parts of the Washing Machine that prove to be defective in  
21 materials or workmanship. A copy of the Electrolux Warranty for Frigidaire Machines is attached  
22 hereto as Exhibit "2".

23 34. Electrolux warrants Crosley Machines for one year from the original date of retail  
24 purchase against defects in materials and workmanship. Electrolux warrants that it will pay all  
25 costs for repairing or replacing any parts of the Washing Machine that prove to be defective in  
26 materials or workmanship. A copy of the Electrolux Warranty for Crosley Machines is attached  
27 hereto as Exhibit "3".

1           35. Electrolux warrants White-Westinghouse Machines for one year from the date of  
2 retail purchase against defects in materials and workmanship. Electrolux warrants that it will pay  
3 all costs for repairing or replacing any parts of the Washing Machine that prove to be defective in  
4 materials or workmanship. A copy of the Electrolux warranty for White-Westinghouse Machines  
5 is attached hereto as Exhibit "4".

6           36. The Representative Consumers and Class members relied on the express written  
7 warranties, and EHP has failed to satisfy its obligations under the express written warranties by not  
8 repairing and/or replacing the Washing Machines or the parts therein, which cause the  
9 development and presence of Biofilm, the Mold Problem, and the Foul Odors.

10           37. As to Electrolux brand Machines, Electrolux further warrants in the Operating  
11 Instructions provided with the Washing Machines that operating the "System Clean" cycle will  
12 "clean and freshen the washer" by using "hot water and two rinses to remove residue that  
13 may cause odor." Electrolux brand Machines prompt the user through the Machines' LCD  
14 displays to run a "System Clean" cycle after every fifty (50) loads. Consumer Representative Fox-  
15 Isicoff and Class members with Electrolux branded Washing Machines relied on the labels and  
16 representations made by Electrolux regarding the Washing Machines' ability to sanitize or sterilize  
17 themselves. Electrolux breached this express warranty because the Washing Machines do not  
18 clean and remove odor-causing residue; rather they cause Biofilm to be deposited or develop  
19 within the plastic tub that houses the basket ("Tub"), on the basket that rotates inside the Tub and  
20 in which Clothes are washed ("Basket"), on the metal support that is attached to the backside of the  
21 basket ("Basket Support Arm") and in and near the sump and pump located within the Washing  
22 Machines and on other parts, pieces, materials and sections of the Washing Machines; and thereby  
23 distribute and spread deleterious organic material, including but not limited to, bacteria and fungus  
24 onto Clothes washed in the Washing Machines. The System Clean cycle does not remove Biofilm,  
25 or prevent or eliminate the Foul Odors and the Mold Problem.

26           38. As to some Frigidaire branded Machines, including models FAFS4474L,  
27 FAFS4473L, FAFS4272L, FAFW3577K, and FAFW3517K, Electrolux warrants that the "Clean  
28 Washer" cycle will "clean and freshen the washer."

1           39. Electrolux further warrants, in its Operating Instructions provided with the  
2 Electrolux branded Washing Machines, that the Machines' **"deep clean sanitize"** cycle can be  
3 used **"to clean and sanitize heavily soiled, colorfast fabrics including towels, bedding, and**  
4 **children's clothing."** Electrolux also warrants that **"[t]he deep clean sanitize cycle will kill**  
5 **99.9% of bacteria with no carryover of bacteria between loads. No bleach or harsh chemicals**  
6 **are needed."**

7           40. As to some Crosley branded Machines, including models CFW7500KB and  
8 CFW7500KR, which Plaintiffs are informed and believe are identical to Frigidaire branded  
9 Machines, including, but not limited to, models FAFS4474L, FAFS4473L, FAFS4272L,  
10 FAFW3577K, FAFW3517K, and ATF8000, Electrolux warrants that the Machines' **"deep clean**  
11 **sanitize"** or **"Sanitize"** cycles can be used **"to clean and sanitize heavily soiled, colorfast fabrics**  
12 **including towels, bedding, children's clothing, or other items where sanitation is desired."**  
13 Electrolux also warrants that **"[t]he Deep Clean Sanitary cycle will kill 99.9% of bacteria with**  
14 **no carryover of bacteria between loads. No bleach or harsh chemicals are required, but**  
15 **higher temperatures are required."**

16           41. Defendant breached the Warranties above because the Washing Machines that have  
17 **"deep clean sanitize"** or **"Sanitize"** cycles do not kill 99.9% of bacteria or sanitize or sterilize  
18 themselves or the Clothes washed inside them, instead these Washing Machines continue to  
19 accumulate Biofilm and develop stronger and additional Foul Odors and greater levels of the Mold  
20 Problem inside the Washing Machines which in turn deposit bacteria and fungi on Clothes washed  
21 inside of them.

22           42. The limitations on remedies contained in EHP's express written Warranties fail of  
23 their essential purpose and are unenforceable with respect to the Mold Problem, Biofilm, and Foul  
24 Odors alleged herein. When Washing Machine owners notify Electrolux that their Washing  
25 Machines have the Foul Odors and Mold Problem, EHP fails to provide any repairs, replacement  
26 of parts, or any other remedy that repairs or replaces the parts and components that cause the  
27 existence of Biofilm, the Foul Odors and/or the Mold Problem. For the same reason, to the extent  
28 there is any notice requirement imposed by law, notice is excused because Defendant has (and had)



1 actual knowledge of defects in the Washing Machines that result in Biofilm, Foul Odors, and the  
2 Mold Problem; therefore notice to it has been, is and will be futile, in that EHP has failed to  
3 remove or replace parts, pieces, materials or components that eliminate Biofilm, the Foul Odors  
4 and the Mold Problem and these problems from returning to the Washing Machines.

5 43. As part of the sale of each Washing Machine, Defendant warranted, marketed, and  
6 advertised that the defective Washing Machines were of merchantable quality fit for the ordinary  
7 purpose for which Washing Machines are used, i.e. to clean Clothes, make them smell appealing,  
8 and clean the Washing Machines themselves, and were free from defects, including the  
9 accumulation of Biofilm, Foul Odors, the Mold Problem, and damage to Clothes that users  
10 attempted to clean by using the Washing Machines.

11 44. As to those Washing Machine owners to whom EHP offered to repair or replace a  
12 part within their Washing Machines under its Warranty in response to their complaints of Biofilm,  
13 Foul Odors or the Mold Problem, the repair fell short of EHP's Warranty obligations because all  
14 EHP "repairs" failed to remedy the defects in the Machines that cause the accumulation of Biofilm,  
15 and the development of Foul Odors and/or the Mold Problem. As a result of the foregoing,  
16 Washing Machines that EHP "repaired," after a Washing Machine owner complained of Biofilm,  
17 Foul Odors or the Mold Problem, continue to have Biofilm, Foul Odors or the Mold Problem.  
18 Despite its legal obligations, and at least two pre-litigation notice and demand letters, Defendant  
19 has refused to recall the Washing Machines to repair or replace the parts or materials that are  
20 defective and cause Biofilm, the Foul Odors and the Mold Problem, or refund all or part of the  
21 monies the Representative Consumers and Class members paid for their Washing Machines.

22 45. Finally, while recognizing the scope and magnitude of the problems caused by the  
23 Defects, both internally and at conferences with salespeople and national outlets such as Best Buy,  
24 Pacific Sales and Lowes, as well as independent distributors, Electrolux consistently has denied to  
25 Plaintiffs that its Washing Machines develop Biofilm, Foul Odors and the Mold Problem.

26 ///

27 ///



1 **Misrepresentations and Omissions**

2 46. At the most basic level, Electrolux fails to disclose the Defects, and falsely  
3 advertises and misrepresents the characteristics, benefits, quality, grade, standard, and/or uses of its  
4 Washing Machines by representing them as “washer(s)” and “machines that wash,” since the  
5 Machines fail their most fundamental intended purpose – making things washed in them clean.  
6 Clothes washed in the Washing Machines smell foul due to the fundamental Defects in the  
7 Washing Machines, the accumulation of Biofilm, and the development of Foul Odors and the Mold  
8 Problem in the Washing Machines. Electrolux represents the Washing Machines are “washers” or  
9 “machines that wash” prior to the time of purchase on the Electrolux, Frigidaire and White-  
10 Westinghouse internet websites<sup>1</sup>, in the Operating Instructions, and on the Washing Machines  
11 themselves as they are displayed and appear at the time of purchase in retail stores where the  
12 Washing Machines are sold.

13 47. Electrolux also fails to disclose, at the retail display of the Machines, on its websites  
14 and at the point of purchase, the extraordinary maintenance that its Machines require in order to  
15 combat the accumulation of Biofilm, Foul Odors, and the Mold Problem. The extraordinary  
16 maintenance, includes but is not limited to, keeping the door open between washes (which poses a  
17 safety risk, as explained below), running frequent and lengthy empty cleaning cycles, the need to  
18 buy and use bleach and/or special washing machine cleaning detergents, and wiping dry the interior  
19 of the Machine, the door glass, and the folds of the rubber door gasket after every wash. This  
20 information is material because a reasonable consumer would want to know how much  
21 maintenance is required for an “automatic” washing machine before buying it, especially since the  
22 reason consumers buy automatic clothes washers is to expedite daily chores, not add to them.

23 48. All Electrolux brand Washing Machines were and are shipped from Electrolux’s  
24 control with writings on them that state a benefit, characteristic, use, and quality of the Machines  
25 includes the availability of the “**System Clean**” cycle. The Operating Instructions that come with

26 <sup>1</sup> Electrolux: <http://www.electroluxappliances.com/laundry-appliances/washers>  
27 Frigidaire: <http://www.frigidaire.com/products/home-appliances/washers>  
White-Westinghouse: [http://www.white-westinghouse.com/products/WW/washers/prod\\_WTF330HS.asp](http://www.white-westinghouse.com/products/WW/washers/prod_WTF330HS.asp)

1 the Machines represent that the “**System Clean**” cycle will “**clean and freshen the washer**” by  
2 using “**hot water and two rinses to remove residue that may cause odor.**” Electrolux also  
3 represents, as to Electrolux brand models, that the Machines’ “**deep clean sanitize**” cycle can be  
4 used “**to clean and sanitize heavily soiled, colorfast fabrics including towels, bedding, and**  
5 **children’s clothing**” and that “[t]he deep clean sanitize cycle will kill 99.9% of bacteria with  
6 **no carryover of bacteria between loads. No bleach or harsh chemicals are needed.**”

7 49. Similarly, some Frigidaire brand models, including, but not limited to, FAFS4474L,  
8 FAFS4473L, FAFS4272L, FAFW3577K, and FAFW3517K, are shipped from Electrolux’s control  
9 with writings on them that state that a benefit and quality of the Machines includes the availability  
10 of a “**Clean Washer**” cycle. Electrolux represents in its Operating Instructions that come with  
11 these Machines that this cycle will “**clean and freshen the washer.**”

12 50. In addition to the foregoing representations, some Frigidaire and Crosley branded  
13 Machines, including, but not limited to, ATF8000, FAFS4474L, FAFS4473L, FAFS4272L,  
14 FAFW3577K, FAFW3517K, CFW7500KB and CFW7500KR are shipped from Electrolux’s  
15 control with writings on them that state that a benefit, characteristic, use, and quality of the  
16 Machines includes the availability of “**deep clean sanitize**” or “**Sanitize**” cycles. Electrolux  
17 represents in Frigidaire and Crosley Operating Instructions that these cycles can be used “**to clean**  
18 **and sanitize heavily soiled, colorfast fabrics including towels, bedding, children’s clothing, or**  
19 **other items where sanitation is desired**” and that “[t]he *Deep Clean Sanitary* cycle will kill  
20 **99.9% of bacteria with no carryover of bacteria between loads. No bleach or harsh chemicals**  
21 **are required, but higher temperatures are required**” (the Crosley, Electrolux, and Frigidaire  
22 models described are collectively referred to hereinafter as “Electrolux Sanitary Models” unless  
23 otherwise noted).

24 51. These foregoing representations are false and misleading because operating “System  
25 Clean” “Clean Washer” “Sanitize” and/or “deep clean sanitize” cycles using the Electrolux  
26 Sanitary Models does not make the Washing Machines or the Clothes washed in these cycles  
27 sanitary, bacteria or fungus free, clean, free of bioorganic material, Biofilm, Foul Odors, or the  
28 Mold Problem. Therefore, following the operation of the sanitary or cleaning cycles, the Washing

1 Machines and Clothes continue to emit Foul Odors that are transferred onto, impregnated into,  
2 and/or made present on Clothes "washed" in the Washing Machines. Also, the failure of these  
3 cycles to eliminate all Biofilm and bioorganic material in the Tub and adjacent areas of the  
4 Washing Machine means that these cycles do not prevent "any carryover bacteria into future loads"  
5 washed in the Machines.

6 52. The foregoing representations are also false and misleading because Electrolux  
7 omits the material information that Biofilm will accumulate in the Washing Machine regardless of  
8 using the sanitary or cleaning cycles as the high-temperature water does not come in contact with  
9 all surfaces within the Tub and areas adjacent thereto in sufficient quantity, or for adequate  
10 duration to kill most common household bacteria that develop and accumulate in the Washing  
11 Machines. Electrolux omits this material information in its communications made available to the  
12 Class members.

13 53. Electrolux made these misrepresentations: 1) as to Electrolux branded Machines, on  
14 the Machines themselves at the time of purchase in retail stores where the Machines are sold  
15 regarding the availability of the cycles, and on the Electrolux internet website prior to purchase,  
16 and the Electrolux Operating Instructions available with the Machines; 2) as to Frigidaire branded  
17 models on the Machines themselves in retail stores where the Machines are sold regarding the  
18 availability of the cycles at the time of purchase, and on the Frigidaire internet website prior to the  
19 time of purchase, and the Frigidaire Operating Instructions available with the Machines; and 3) as  
20 to the Crosley brand models on the Machines themselves at the time of purchase in retail stores  
21 where the Machines are sold regarding the availability of the cycles, and in the Crosley Operating  
22 instructions available with the Machines.

23 54. Given the continued presence of Biofilm and bioorganic material on parts of the  
24 Machines and the Foul Odors that are transferred onto Clothes washed in the Machines and emitted  
25 from the Machines themselves following the completion of a "System Clean", "Clean Washer",  
26 "Sanitize", and/or "deep clean sanitize" cycle, the Electrolux Sanitary Models do not have the



1 characteristics, benefits, qualities, grade, standard and/or uses that Electrolux represents and  
2 advertises they have.

3 55. Electrolux also fails to inform users prior to and at the time of purchase, and in the  
4 Operating Instructions, which it provides to consumers with the purchase of every Washing  
5 Machine, that even if consumers operate the Washing Machines as instructed, Biofilm, the Foul  
6 Odors and the Mold Problem will develop and accumulate in each Washing Machine regardless of  
7 the owner's use and maintenance of the Washing Machine, due to the Defects in the Washing  
8 Machine. The Defects render the Washing Machines unusable for the ordinary purpose for which  
9 they were advertised, marketed and sold.

10 56. In response to consumer complaints about the Foul Odors and the Mold Problem,  
11 made after the time of purchase after consumers had used the Machines, Electrolux recommends  
12 that consumers: periodically run extra empty bleach and hot water cleaning cycles (or with washers  
13 equipped with the "System Clean" or "Clean Washer" cycles, they have recommended running  
14 these cycles more often); purchase Glisten dishwasher cleaner through Frigidaire's website; wipe  
15 dry the basket, door glass, and rubber door gasket after each wash; wipe the gasket with vinegar  
16 and/or bleach; and/or leave the door open between washes (collectively referred to as the  
17 "Extraordinary Actions").

18 57. Based on the foregoing, Electrolux has misrepresented the quality and performance  
19 of the Washing Machines prior to and at the time of purchase. For example, on the Machines  
20 themselves, their packaging, and on the Electrolux and Frigidaire websites Electrolux promotes the  
21 Washing Machines as "High Efficiency." Electrolux also labels the Washing Machines as "Energy  
22 Star"<sup>2</sup> compliant on stickers or placards it places on or in the Washing Machines themselves, and  
23 on its product descriptions found on its website.

24

25 <sup>2</sup> ENERGY STAR is a voluntary labeling program designed to identify and promote energy-efficient products through  
26 a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy. Electrolux tests its  
27 own Washing Machines and submits its test results to the U.S. Department of Energy who then applies a standard  
28 formula to calculate the energy rating. The tests performed by Electrolux do not take account of the empty-hot water  
cleaning cycles that Electrolux recommends Class members run to avoid or remedy the Mold Problem.

1           58.     These representations are false and were known by Electrolux to be false when they  
2 were made because Electrolux recommends to complaining consumers only well after the time of  
3 purchase that they must regularly run extra empty hot-water cycles or more frequent cleaning  
4 cycles to combat Biofilm, Foul Odors, and the Mold Problem in the Washing Machines. When  
5 Washing Machine owners run these additional cycles, they lose the water and energy efficiency  
6 savings that Electrolux represented were the benefits and characteristics of owning its Energy Star-  
7 compliant Washing Machines. Effectively Electrolux has spoken out of both sides of its mouth.  
8 However, it only speaks, before selling to the public, out of the side that represents the Washing  
9 Machines are energy and water efficient, while concealing its knowledge that consumers must  
10 frequently run extra empty hot-water cycles for its Washing Machines to operate as it intends,  
11 which necessarily result in the Machines not being as energy or water efficient as represented. This  
12 is material information because front-load washers often sell at a premium to top load washers, and  
13 many consumers justify spending the premium based on the energy and water savings they expect  
14 to attain based on the Energy Star ratings.

15           59.     The Extraordinary Actions are not part of normal washing machine ownership. The  
16 Extraordinary Actions that Electrolux now, post-sale, recommends consumers take to reduce the  
17 incidence of Biofilm, the Foul Odors and the Mold Problem, require Washing Machine owners to  
18 spend money and time they did not expect to spend. The Extraordinary Actions require Washing  
19 Machine owners to pay for the additional energy, water, and bleach, or other cleaning agents such  
20 as Glisten, Affresh or Tide Washing Machine Cleaner needed to regularly run hot-water cycles in  
21 an attempt to redress the effects of the Defects in the Washing Machines (the additional cost for  
22 energy, water, bleach, and cleaning agents to perform the Extraordinary Actions are hereafter  
23 referred to as "Undisclosed Additional Operating Expenses").

24           60.     As a result of Electrolux's concealment of the Extraordinary Actions and the  
25 resulting Undisclosed Additional Operating Expenses, Washing Machine owners are not provided  
26 material information, known by Electrolux, before they decide which brand of washing machine to  
27 buy. The Washing Machines are worth less than the price Consumer Representatives and the Class



1 members paid for them and ownership and operation of the Washing Machines will cost more than  
2 Defendant represented.

3 61. Electrolux was obliged to disclose the material facts because: a) it had exclusive  
4 knowledge of the material facts not known to Plaintiffs, since only Defendant had access to the  
5 aggregate data from its retailers, its own tests, and complaints from its customers; b) it actively  
6 concealed and suppressed the material facts from Plaintiffs by not warning of the Defects at the  
7 time of purchase and by performing warranty and/or repair work that it knew would not cure the  
8 Defects unknown to Plaintiffs; c) by recommending remedies to complaining consumers that it  
9 knew would not cure the Defects or resulting problems, thereby causing damages; and/or d)  
10 Defendant recommended futile actions, such as advising Plaintiffs to run empty hot-water and  
11 bleach cycles, and wipe dry the door gasket, door glass and basket after every wash, but at the same  
12 time suppressed the material fact that the Machines had inherent defects that caused Biofilm, the  
13 Mold Problem and the Foul Odors.

14  
15 **Electrolux's Suggested Remedies and Repairs Do Not Cure The Defects, Are Dangerous, and**  
16 **Accelerate the Break-Down of The Machines.**

17 62. One of the Extraordinary Actions that Electrolux recommends its customers  
18 perform is to wipe down the door gasket after every wash or use a water and bleach and/or water  
19 and vinegar mixture for the purpose of removing Biofilm and bioorganic material that develop on  
20 and in the rubber door gasket material. However these recommended actions accelerate the  
21 deterioration of the door gasket. Deteriorated rubber door gaskets do not properly seal, thereby  
22 causing consumers to spend additional money to replace door gaskets more frequently than they  
23 would if they did not have to wipe them with bleach mixtures to mitigate Biofilm, Foul Odors and  
24 the Mold Problem.

25 63. Electrolux also recommends to Class Members that they leave the Washing  
26 Machine door open between washes to reduce the incidence and affects of Biofilm and the Mold  
27 Problem. Not only does this recommendation not solve or prevent the problems, it creates a risk of  
28 injury to children and pets. Ironically, in the Operating Instructions for all models, Electrolux

1 warns under the heading "ENTRAPMENT and TIP-OVER HAZARD" – "Do not leave the door  
2 open if there are small children or pets present. An open door could entice children to hang on the  
3 door or crawl inside the washer."

4 64. Indeed, the Consumer Product Safety Commission is investigating the death of a 4  
5 year-old girl who climbed into a front load machine that her younger brother turned on and EHP  
6 has been named a defendant in a wrongful-death action removed to the Central District of  
7 California (Case No. SACV10-00832 JVS (RNBx)) which is believed to have originated from the  
8 same incident. As such, Electrolux has knowledge of the danger of this recommendation and how  
9 consumers would find this information material prior to purchasing a Washing Machine. This  
10 omission directly relates to safety of the Machines and therefore is a material fact that Electrolux  
11 was obliged to disclose.

12 65. Electrolux was in exclusive possession of information about the Defects, Biofilm,  
13 the Foul Odors, the Mold Problem, and the Undisclosed Additional Operating Expenses which  
14 were material to Plaintiffs' decisions to buy the Washing Machines. Electrolux had a duty, under  
15 the circumstances, to disclose the Defects, and the Machines' propensity to accumulate Biofilm,  
16 developed Foul Odors and the Mold Problem, and cause their owners to incur Undisclosed  
17 Additional Operating Expenses, prior to their purchases. Nevertheless, Electrolux has failed and  
18 refused to disclose to its customers the serious Defects inherent in the Washing Machines or to  
19 warn them about Biofilm, Foul Odors, the Mold Problem and Undisclosed Additional Operating  
20 Expenses they will incur. Instead, Electrolux has kept silent while uninformed consumers, lacking  
21 the material information known to Electrolux, purchased and continue to purchase the defective  
22 Washing Machines.

23 66. Electrolux has also refused, and continues to refuse, to modify the Washing  
24 Machines to repair the Defects so that the Machines no longer have Biofilm, the Foul Odors, and  
25 the Mold Problem or cause their owners to incur Undisclosed Additional Operating Expenses.  
26 Electrolux could eliminate the Defects by altering the Washing Machine's design, how the  
27 Washing Machine operates and/or using different parts and/or materials.

1           67. In light of Electrolux's knowledge of the serious problems caused by the Defects in  
2 the Washing Machines, Electrolux knew, or should have known, that when it sold the Washing  
3 Machines to consumers that they had a value that was substantially less than their actual retail  
4 purchase price.

5           68. The Representative Consumers and Class members reasonably expected that the  
6 Washing Machines would not contain the Defects. The presence of the Defects substantially  
7 reduce the Washing Machines' value, in that: a) Electrolux sold the Washing Machines without the  
8 intent to sell them as advertised; b) the Washing Machines do not have uses, benefits and  
9 characteristics Electrolux represented they would have; and c) are not of the standard, quality or  
10 grade Electrolux represented; d) extensive use of corrosive chlorine bleach as recommended by  
11 Electrolux post-sale will shorten the expected life of the Machines; (e) the Machines do not clean  
12 Clothes; and (f) Machines known to have defects are less desirable to subsequent purchasers and  
13 thus have a lower market re-sale value.

14           69. Further, Electrolux's concealment of the Defects, the accumulation of Biofilm, the  
15 Foul Odors, the Mold Problem and the Undisclosed Additional Operating Expenses that will result  
16 under normal operating conditions is a deceptive, unlawful, unfair, and fraudulent business act and  
17 practice. Furthermore, Electrolux's concealment of Biofilm, the Foul Odors, the Mold Problem  
18 and the Undisclosed Additional Operating Expenses means its advertising of the Machines was  
19 unfair, deceptive, untrue and misleading. The Representative Consumers and Class members also  
20 reasonably expected that the Washing Machines would not require extensive and expensive repairs  
21 (or the purchase of extended or third party warranties needed to pay for significant costs to  
22 continuously attempt to fix problems inherent in the Washing Machines) as a result of the Defects,  
23 which were known to Electrolux before and at the time the Washing Machines were sold to  
24 Representative Consumers and the Class members. If Electrolux had not misrepresented and  
25 concealed material information regarding the Washing Machines' Defects, Plaintiffs would not  
26 have purchased the Washing Machines at premium prices on the terms offered.

27           70. Electrolux also has profited, either directly or indirectly, by concealing the nature of  
28 the Defects because Electrolux has been able to convince a large number of consumers to purchase

the Washing Machines and to pay for Electrolux's repair services and replacement parts (from which Electrolux earns a profit), such as new door gaskets, to address the Biofilm, Foul Odors, Mold Problem and the Undisclosed Additional Operating Expenses *even though Electrolux has no cost-effective remedy for the Defects*, knows that replacement parts it offers the Class cannot cure the Defects, and has in fact profited by failing and refusing to correct the Defects in the Washing Machines.

**Electrolux's Knowledge and/or Reckless Disregard of the Defects and Mold Problem**

71. Electrolux is aware of the Defects, the accumulation of Biofilm, the resultant development of Foul Odors and the Mold Problem, and the Undisclosed Additional Operating Expenses associated with the Washing Machines, and has been for some time. The Representative Consumers and many Class members have alerted Electrolux to the presence of Biofilm, Foul Odors, and the Mold Problem by complaining to Electrolux directly and/or to Electrolux's authorized retailers and service representatives and/or through the Electrolux and Frigidaire internet web sites.

72. Indeed, the Internet is replete with references and complaints regarding the Washing Machines that mirror allegations in this Complaint. Relevant excerpts from a sampling of these complaints are set forth below:

<p><b><u>Feb 22, 2010</u></b></p> <p><b>viewpoints.com</b></p> <p><b>Crosley Washer</b></p> <p><a href="http://www.viewpoints.com/Crosley-Front-Load-Washer-review-23a04">http://www.viewpoints.com/Crosley-Front-Load-Washer-review-23a04</a></p> <p>last accessed 4/6/10</p>	<p><b>I bought a Crosley CFW4000FW1 Front Loading washing machine 10/09 every seems OK until now. 2/10. The gasket that seals the door has developed black mold and an awful smell, which also affect my clothes. Apparently it does not drain all the water out between washings.</b></p>
<p><b><u>[undated]</u></b></p> <p><b>washerreviews.net</b></p>	<p>Unfortunately, a White Westinghouse washer falls under the category of "washers to stay away from."</p>



<p><b>White Westinghouse Washer</b></p> <p><a href="http://www.washerreviews.net/white-westinghouse-washer.html">http://www.washerreviews.net/white-westinghouse-washer.html</a></p> <p>last accessed 4/6/10</p>	<p>Of all the product reviews on the Internet, the number of negative reviews about these is overwhelming and devastating especially to the producers.</p> <p>First off, they have, in the past, needed to recall a lot of washers because of their being fire hazards.</p> <p>Other complaints include:</p> <p><b>Inefficient design – front load washer doors collect water that enable mold to develop</b></p> <p><b>Clothes smell bad after washing even with application of detergent and fabric softener (which is normally scented)</b></p> <p>Has problems draining water after cycles, which <b>results to molds and/or contribute to the bad smell of washed clothes</b></p>
<p><u><b>February 1, 2010</b></u></p> <p><b>consumeraffairs.com</b></p> <p><b>Frigidaire Washer</b></p> <p><a href="http://www.consumeraffairs.com/homeowners/frigidaire_washer.html">http://www.consumeraffairs.com/homeowners/frigidaire_washer.html</a></p> <p>last accessed 4/6/10</p>	<p>We purchased a Frigidaire Affinity Washer (ATF6000ES) &amp; Dryer July 24, 2007. Paid 599 for washer and 489 for dryer. Also we bought an 5 year extended warranty for an additional 169.96. No problem with the dryer but the washer stinks and is full of mold. <b>I have been leaving the door open, which isn't safe because my 10 year old found my 3 year old daughter in the washer with the door closed the other day.</b> She was fine, but.... <b>I have tried to scour the rubber seal and run vinegar thru the cycle also to no avail.</b> I am trying to get the company to take this back. I have already called Frigidaire and they say that their warranty was only for 1 year and that I have to deal with the company that sold us the 5 yr. warranty. So far, Jim L has avoided me since a couple weeks before Christmas...when he said, "I'm on this." I just got done reading all about the poor other people that are dealing with this problem with these front loaders. And they are still selling them?!?!? What are we suppose to do??</p>



<p><b><u>October 11, 2009</u></b></p> <p><b>fixya.com</b></p> <p>White Westinghouse Washer</p> <p><a href="http://www.fixya.com/support/t3161127-dirty_smelly_front_loading_washing">http://www.fixya.com/support/t3161127-dirty_smelly_front_loading_washing</a></p> <p>last accessed 4/7/10</p>	<p>I have a Westinghouse Mastermind 708 front loading washing machine. <b>There is a terrible smell from it, and I can found a thick gray buildup of hair and goo around the edge of the drum.</b></p>
<p><b><u>Apr 18, 2009</u></b></p> <p><b>fixya.com</b></p> <p><b>Frigidaire Washer</b></p> <p><a href="http://www.fixya.com/support/t238848-frigidaire_washing_machine_collects">http://www.fixya.com/support/t238848-frigidaire_washing_machine_collects</a></p> <p>last accessed 4/6/10</p>	<p><b>I have the same problem with the mold growing on the gasket.</b> The stench has become so bad that my parents have pulled me aside to inform me about how my family's clothes smell. I was told that many other manufactures with front load machines have issued recalls for this issue, but it looks like Frigidaire will not be standing by their product. I was told that they are one of the best manufactures, but am finding their washing machine sub par. How many of us have to complain before they will take action.</p>
<p>March 17, 2010</p> <p><b>fixya.com</b></p> <p>Electrolux Washing Machine</p> <p><a href="http://www.fixya.com/support/t4356926-mold_growing_rubber_ring_in_door">http://www.fixya.com/support/t4356926-mold_growing_rubber_ring_in_door</a></p> <p>last accessed 4/7/10</p>	<p>Generic problem for all Electrolux Washing Machines:</p> <p><b>i have mold growing on the rubber ring in door what has caused this and how do i get rid on this?? also the electrolux EW1280f doesn't seem to be washing my clothes properly the still come out dirty.</b></p>

72. As a result of the flurry of consumer complaints regarding the defects that Defendant would not and/or could not remedy, several entrepreneurs created and marketed products designed to treat, eliminate and/or minimize the Foul Odors and Mold Problems caused by the defective Washing Machines. These products include SmellyWasher, NuFreshNow, Tide Washing Machine Cleaner, and Affresh. Due to the widespread and intractable nature of the Foul Odors and the Mold Problem once they have manifested, these entrepreneurs have sold tens of

1 thousands, if not millions, of their products to consumers. However, all are ineffective in  
2 preventing and/or fixing the Defects that cause Biofilm, the Foul Odors, the Mold Problem and the  
3 Undisclosed Additional Operating Expenses. Indeed, these products are but one more Undisclosed  
4 Additional Operating Expense.

5 73. Not to be outdone, Electrolux has begun marketing Glisten Dishwasher Cleaner as a  
6 remedy for moldy washing machines through its website  
7 (<http://frigidaire.stores.yahoo.net/glisten2pack.html>) through which Electrolux represents "a little  
8 Glisten in your front-loading washing machine will remove odors from the tub." Electrolux directs  
9 complaining consumers to purchase Glisten from the Frigidaire website. See Exhibit "5".

10 74. By reviewing the latest edition of one of Defendant's "Use and Care"  
11 Guides/Operating Instructions, it is also clear that Electrolux knew or recklessly disregarded the  
12 problem. In what, upon information and belief, is Frigidaire's March 2010 edition of its  
13 FAFS44731 model Use & Care Guide, under the heading "Inside Routine Cleaning (Preventative),"  
14 Electrolux states "[t]o help prevent **odors, mold or mildew**, leave the door open for a few hours  
15 after use or whenever the washer is not in use." Under the heading "Inside Cleaning  
16 (Aggressive)" Electrolux states "in cases where the Clean Washer cycle along with care and  
17 cleaning of rubber gasket folds isn't done, and **sever odor, mold, mildew, or residue** have  
18 developed... pour eight (8) cups of bleach into the "MAIN WASH" detergent compartment... for  
19 **especially contaminated areas** visible inside the drum (including the front rubber seal), these  
20 areas might be more effectively cleaned by spraying a Bleach Cleaner on a scrub brush, soft  
21 sponge, or towel and scrubbing."

22 75. As further evidence of Electrolux's knowledge of the Defects, according to  
23 Appliance Service News (January 2008 issue), an appliance industry periodical for service  
24 professionals, Electrolux redesigned the door gasket/boot for Frigidaire branded models sometime  
25 in 2007 to remove "the convolutions of the boot" in an attempt to reduce the amount of water that  
26 collected after each wash and the growth of Biofilm (the newer design is bellows kit part #  
27 123415300). Despite this effort and the redesigned gasket, the Machines with the newer gasket  
28 develop Biofilm, the Foul Odors and the Mold Problem.

1           76.     Electrolux failed to adequately design and/or test the Washing Machines to ensure  
2 that they are free from the Defects that cause Biofilm, Foul Odors, the Mold Problem, and do not  
3 cause their owners to incur Undisclosed Additional Operating Expenses. Before Electrolux began  
4 selling the Washing Machines, Electrolux knew, or was reckless in not knowing, that the  
5 Machines: (a) contain the Defects in design, programmed operation, parts, materials, assembly and  
6 workmanship; and (b) are not of merchantable quality or fit for their ordinary purpose.

7           77.     Plaintiffs are informed and believe Electrolux acknowledged internally that the  
8 Defects causing Biofilm, Foul Odors, and the Mold Problem related to, *inter alia*, the Defects in  
9 the Washing Machines' design, programmed operation, parts, pieces, materials, assembly and  
10 workmanship.

11           78.     Electrolux continues to conceal material information, even post-sale, from users,  
12 consumers, and the public, through its customer service representatives, by not disclosing to Class  
13 members that the Washing Machines are: (a) inherently defective; (b) not of merchantable quality  
14 or fit for their ordinary purpose; and/or (c) will not sanitize or sterilize Clothes and cannot be made  
15 virtually free of household bacteria, fungus and/or Foul Odors.

16           79.     Despite having repeated notice of the Defects in its Washing Machines and the  
17 reasonable expectations of consumers created by Electrolux's marketing of its Washing Machines,  
18 Electrolux has engaged and continues to engage in the following routine, albeit, wrongful course of  
19 conduct, where it:

20           a)     Designs, manufactures and sells Washing Machines with Defects which cause  
21 Biofilm, the Foul Odors, the Mold Problem and Class Members to incur the Undisclosed  
22 Additional Operating Expenses;

23           b)     Fails to disclose that the Washing Machines have Defects that cause Biofilm, Foul  
24 Odors, the Mold Problem and Undisclosed Additional Operating Expenses;

25           c)     Continues to represent the Washing Machines are "washers", "washing machines,"  
26 and/or "machines that wash" when they fail to i) effectively clean themselves, and ii) make Clothes  
27 washed in them clean and odor free;

1 d) Continues to represent expressly or by necessary implication that the Washing  
2 Machines Plaintiffs purchased are dependable, cost effective, and would provide outstanding  
3 cleaning performance as washing machines when it knew that these statements were false;

4 e) Continues to manufacture, market, advertise, distribute, and sell the Washing  
5 Machines to consumers when it knew or should have known the Washing Machines were not  
6 dependable and would not withstand normal operation;

7 f) Fails to disclose to Plaintiffs the substantial risk of Washing Machine failure;

8 g) Fails to disclose the nature of the Defects to consumers;

9 h) Fails to disclose the many complaints of Biofilm, the Foul Odors, and the Mold  
10 Problem in the Washing Machines that it received from consumers (or the high incidence of  
11 attempted but futile repairs of the Washing Machines);

12 i) Fails to implement a recall or repair program to adequately announce to Plaintiffs  
13 the presence of the Defects, and Biofilm, the Foul Odors, the Mold Problem and Undisclosed  
14 Additional Operating Costs caused by the Defects. And fails to provide, without charge to  
15 Plaintiffs a solution to remedy and correct the Defects;

16 j) Fails to disclose to Plaintiffs that EHP is not committed to make repairs, under its  
17 Warranties, that would correct and eliminate the defects in materials and workmanship that caused  
18 Biofilm, the Foul Odors, the Mold Problem and Undisclosed Additional Operating Expenses;

19 k) Fails to take action to correct its concealment of material information or false and  
20 misleading implied or express representations about the use, benefits, characteristics, standard,  
21 quality, grade and performance of its Washing Machines; and

22 l) Fails to disclose that despite following its recommendations on how to operate the  
23 Washing Machines, found within the Operating Instructions, the Washing Machines will  
24 accumulate Biofilm, and develop Foul Odors and the Mold Problem, and that Plaintiffs would  
25 incur Undisclosed Additional Operating Expenses.

26 80. As a result of Electrolux's deceptive conduct and concealment of material  
27 information about its Washing Machines, as well as its other acts and omissions described in this  
28



1 Complaint, Electrolux has caused Plaintiffs to suffer injury as result of the Defects in the Washing  
2 Machines, including, but not limited to:

- 3 a) Plaintiffs overpaid for a defective product;
- 4 b) The value of Plaintiffs' Machines is less than it would have been, if the Washing  
5 Machines did not have the Defects; and
- 6 c) Plaintiffs reasonably spent money for attempted repairs of the Defects, and other  
7 purported remedies, which money they would not have spent but for Electrolux's concealment of  
8 material information and misrepresentations about the Washing Machines and the efficacy of the  
9 altered use or repairs it recommended Plaintiffs perform on their Washing Machines.

10 81. If Plaintiffs had known about the Defects in the Washing Machines, and about the  
11 Machines' propensities to accumulate of Biofilm, develop Foul Odors and the Mold Problem, and  
12 incur Undisclosed Additional Operating Expenses caused thereby, they would not have paid the  
13 significant sums of money that they paid for the Washing Machines.

14 82. In sum, Electrolux manufactures and sells Washing Machines with inherent Defects  
15 that cause them to accumulate Biofilm, develop the Mold Problem and emit Foul Odors all of  
16 which Electrolux fails to disclose, and misrepresents the Washing Machines' benefits,  
17 characteristics, uses, and qualities. Then Electrolux denies Warranty claims and instead  
18 recommends that the Plaintiffs undertake previously undisclosed, impractical, costly, and  
19 inefficient Extraordinary Actions which cause them to incur Undisclosed Additional Operating  
20 Expenses.

### 21 TOLLING OF STATUTES OF LIMITATIONS

22 83. Any applicable statutes of limitation have been tolled by Defendant's continuing,  
23 knowing and active concealment of the facts alleged herein. Defendant has kept Plaintiffs ignorant  
24 of vital information essential to the pursuit of their claims without any fault or lack of diligence on  
25 their part. For example, Defendant told complaining Plaintiffs that they were not operating or  
26 maintaining their Machines correctly and suggested remedies that only delayed discovery of the  
27 Defects, or replaced parts (e.g. the door gasket) that Defendant knew would not cure the problem



1 while leading Plaintiffs to believe the problem would be cured. As such, Plaintiffs could not have  
2 reasonably discovered the facts giving rise to the claims asserted herein until recently.

3 84. In the alternative, Defendant should be estopped from relying on any statutes of  
4 limitation. Defendant has been under a continuing duty to disclose the true character, quality, and  
5 nature of its Washing Machines to Plaintiffs, and to repair the Defects, but have failed to do so.  
6 Because Defendant is and was in exclusive possession of the facts and information concerning the  
7 true character, quality and nature of the Washing Machines, Defendant is estopped from relying on  
8 any statutes of limitations.

9  
10 **CLASS ACTION ALLEGATIONS**

11 85. Consumer Representatives bring this action on behalf of themselves and all others  
12 similarly situated as a class action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of  
13 Civil Procedure.

14 86. The Classes which the Consumer Representatives seek to represent are defined as  
15 follows:

16 **California Subclass:** All Class members who purchased a Washing Machine in the State  
17 of California and who purchased the Machine for primarily personal, family or household use.

18 **Florida Subclass:** All Class members who purchased a Washing Machine in the State of  
19 Florida for primarily personal, family, or household purposes, and not for resale.

20 **Maryland Subclass:** All Class members who purchased a Washing Machine in the State of  
21 Maryland for primarily personal, family, or household purposes, and not for resale.

22 **Michigan Subclass:** All Class members who purchased a Washing Machine in the State of  
23 Michigan for primarily personal, family, or household purposes, and not for resale.

24 **New York Subclass:** All Class members who purchased a Washing Machine in the State  
25 of New York for primarily personal, family, or household purposes, and not for resale.

26 **Oregon Subclass:** All Class members who purchased a Washing Machine in the State of  
27 Oregon for primarily personal, family, or household purposes, and not for resale.

1       **Pennsylvania Subclass:** All Class members who purchased a Washing Machine in the  
2 State of Pennsylvania for primarily personal, family, or household purposes, and not for resale.

3       **Texas Subclass:** All Class members who purchased a Washing Machine in the State of  
4 Texas for primarily personal, family, or household purposes, and not for resale.

5       87. Excluded from the Classes are (i) Defendant, any entity in which Defendant has a  
6 controlling interest or which has a controlling interest in Defendant, and Defendant's legal  
7 representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) Defendant's  
8 employees, officers, directors, agents, and representatives and their family members; and (iv) the  
9 Judge and staff to whom this case is assigned, and any member of the Judge's immediate family.  
10 Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation  
11 reveals the Classes should be expanded or otherwise modified.

12       88. This action has been brought and may properly be maintained as a class action,  
13 pursuant to Federal Rule of Civil Procedure 23, subsections (b)(2) and (b)(3), because there is a  
14 well-defined community of interest in the litigation and the proposed classes are easily  
15 ascertainable:

16       a) Numerosity. The Washing Machines were sold and distributed by Electrolux  
17 throughout the United States. Plaintiffs are informed and believe that the proposed putative  
18 Classes are made-up of tens of thousands of residents of the Consumer Representative states.

19       b) Common Issues Predominate. Common questions of law and fact exist as to all  
20 members of the Class and predominate over any questions which affect only individual members  
21 of the Class. The Washing Machines are all the same and do not differ in any manner that is  
22 relevant to Plaintiffs' allegations of Defects, and the damage and harm caused thereby. Plaintiffs  
23 allege herein that the Machines all have the same inherent Defects (and that they were defective  
24 when made, when they left Electrolux's possession and control, and are presently defective as they  
25 are now being used by Class members). There is a well-defined community of interest in the  
26 questions of law and fact involved and that affect Plaintiffs who purchased the Washing Machines,  
27 and they all suffer from inherent and common defects. These questions of law and fact  
28 predominate over questions that affect only individual class members.

1 The common questions of law and fact include, without limitation:

2 (1) Whether the Washing Machines are defective;

3 (2) Whether Electrolux knew and/or recklessly disregarded the fact that the  
4 Washing Machines were and are defective;

5 (3) Whether Electrolux concealed, and failed to disclose to the Class, material  
6 facts in its communications and disclosures to Plaintiffs and Class members regarding the Defects,  
7 which are inherent in the Washing Machines;

8 (4) Whether Electrolux has engaged in unfair methods of competition,  
9 unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the  
10 sale of the Washing Machines;

11 (5) Whether Electrolux violated the consumer protection statutes of Consumer  
12 Representatives' respective states;

13 (6) Whether Electrolux breached express written and/or representative  
14 warranties and/or extended warranties;

15 (7) Whether Electrolux breached its implied warranties;

16 (8) Whether Electrolux has been unjustly enriched;

17 (9) Whether, as a result of Electrolux's conduct, Plaintiffs have suffered  
18 damages; and if so the appropriate amount thereof; and

19 (10) Whether, as a result of Defendant's misconduct, Plaintiffs are entitled to  
20 equitable relief and/or other relief, and, if so, the nature of such relief.

21 These questions of law and fact predominate over questions that affect only individual  
22 Class members and there is a well-defined community of interest in the questions of law and fact  
23 involved and that affect the Class.

24 c) Typicality. The Consumer Representatives' claims are typical of the claims of the Class  
25 members in that the Consumer Representatives and the Class members have the same Washing  
26 Machines, which share the same design, parts, materials, workmanship and manufacture and about  
27 which Defendant repeatedly made the same or nearly identical, uniform representations and

1 omissions. Therefore the claims of the Consumer Representatives are and will be typical of Class  
2 members.

3 d) The Classes are Ascertainable. The Representative Consumers have adequately defined  
4 the Classes, as detailed above, so the Court will be able to use the definitions to determine class  
5 membership.

6 e) Adequacy. The Consumer Representatives will fairly and adequately represent the  
7 interests of all Class members. The Consumer Representatives have each purchased a Washing  
8 Machine and are adequate representatives of the Class as they have no interests which are adverse  
9 to the interests of absent Class members. The Consumer Representatives have retained counsel  
10 with substantial experience and success in the prosecution of complex defective product and  
11 consumer protection class action litigation.

12 f) Superiority. A class action is superior to other available means for the fair and efficient  
13 adjudication of this controversy. Class action treatment will permit a large number of similarly  
14 situated persons to prosecute their common claims in a single forum simultaneously, efficiently  
15 and without the unnecessary duplication of effort and expense that numerous individual actions  
16 would engender. The disposition of their claims in this case and as part of a single class action  
17 lawsuit, rather than thousands of individual lawsuits, will benefit the parties and greatly reduce the  
18 aggregate judicial resources that would be spent if this matter were handled as hundreds of separate  
19 lawsuits. Furthermore, given the extraordinary expenses and burden in conducting the discovery  
20 and presentation of evidence about the inherent defects in the Washing Machines, the burden of  
21 individual litigation would make it extremely difficult, if not impossible for individual members of  
22 the Class to redress the wrongs asserted herein, while an important public interest will be served by  
23 addressing the matter as a class action. Moreover, separate prosecution by thousands of individual  
24 members of the Class would likely establish inconsistent standards of conduct for the Defendant  
25 and result in the impairment of, and potential harm to, Class members' rights and the disposition of  
26 their interests through actions to which they were not parties. Plaintiffs are informed and believe  
27 that a great amount of time and expense will be saved by conducting the discovery and presentation  
28 of evidence about the inherent Defects in the Washing Machines in a single class action lawsuit, in



1 contrast to the repeated discovery and presentation of evidence in hundreds or thousands of  
2 separate lawsuits brought on the common questions presented by the allegations of this complaint.  
3 The Consumer Representatives know of no difficulty that will be encountered in the management  
4 of this litigation which would preclude its maintenance as a class action.

5  
6 **FIRST CAUSE OF ACTION**

7 **Asserted On Behalf Of the California Class**  
8 **(Violations of Cal. Bus. & Prof. Code § 17200 *et seq.*)**

9 89. Consumer Representative Frutkoff repeats and re-alleges all prior paragraphs and  
10 incorporates them as if fully set forth herein.

11 90. Defendant has engaged in unfair, unlawful, and fraudulent business acts or practices  
12 as set forth above.

13 91. Gary Frutkoff brings this cause of action on behalf of himself and the California  
14 Class, pursuant to California Business and Professions Code, §17200, *et seq.*

15 92. Defendant's conduct constitutes **unfair** business acts and/or practices because  
16 Defendant's practices have caused and are likely to cause substantial injury to Plaintiffs which  
17 injury is not reasonably avoidable by Plaintiffs in light of Defendant's exclusive knowledge of the  
18 Defects in the Washing Machines, and is not outweighed by the practice's benefits, if any, to  
19 Plaintiffs. Such conduct is ongoing and continues to this date.

20 93. Defendant's acts and practices of selling Washing Machines while omitting the  
21 material facts that the Washing Machines have a high propensity to accumulate Biofilm, and  
22 develop Foul Odors and the Mold Problem, and cause Machine owners to incur Undisclosed  
23 Additional Operating Expenses offends an established public policy and is immoral, unethical,  
24 oppressive, unscrupulous or substantially injurious to consumers. Furthermore, these acts,  
25 practices and omissions threaten an incipient violation of antitrust laws and/or consumer protection  
26 statutes, or violate the policy and spirit of one of those laws because the effect of the acts and  
27 practices are comparable to or the same as a violation of the law or otherwise significantly threaten  
28 or harm competition.



1           94. Defendant's acts and practices are unlawful because they violate California Civil  
2 Code §§ 1668, 1709, 1710, 1711. Defendant's acts and practices are also unlawful because they  
3 violate the Song-Beverly Act, Civil Code §§ 1790 et seq., the Consumer Legal Remedies Act,  
4 Civil Code 1750 *et seq.*, Cal. Commercial Code §§ 2313 and 2314, and Bus. & Prof. Code §  
5 17500, and the Magnuson-Moss Warranty Act ("MMWA").

- 6           i. Defendant violates Civ. Code § 1668 by attempting to exempt itself from  
7 liability for selling defective washers and by unlawfully limiting the  
8 warranty period of the Washing Machines it knows to be defective.
- 9           ii. Defendant violates Civ. Code §§ 1709, 1710, and 1711 by not disclosing  
10 to the public the material fact that the Machines have a high propensity to  
11 develop and accumulate Biofilm when used in a reasonably foreseeable  
12 manner, which in turn causes the development of Foul Odors, the Mold  
13 Problem and Plaintiffs to incur Undisclosed Additional Operating  
14 Expenses. Defendant knowingly or recklessly concealed or suppressed  
15 from Plaintiffs that the Washing Machines develop Biofilm, the Foul  
16 Odors and the Mold Problem and that as a result Plaintiffs will incur  
17 Undisclosed Additional Operating Expenses, thereby defrauding Plaintiffs.  
18 Plaintiffs were unaware of the Defects and that the Defects would cause  
19 the development of Biofilm, the Foul Odors and the Mold Problem.  
20 Plaintiffs would not have purchased the Machines had they known of the  
21 Defects before they purchased the Machines. As a result of Defendant's  
22 concealment of the Defects, and the Machines' propensity to accumulate  
23 Biofilm, develop Foul Odors and the Mold Problem, and the Extraordinary  
24 Actions that result in Undisclosed Additional Operating Expenses,  
25 Plaintiffs lost money by overpaying for the Washing Machines, and paying  
26 for repairs and/or costs associated with Defendant's suggested remedies.

- 1                   iii. Defendant violates Cal. Bus. & Prof. Code § 17500 as alleged throughout  
2                   this Complaint and in the Second Cause of Action, incorporated hereto by  
3                   reference.
- 4                   iv. Defendant violates the CLRA, Cal. Civ. §§ 1750 *et seq.*, as alleged  
5                   throughout this Complaint and the third cause of action, incorporated by  
6                   reference hereto.
- 7                   v. Defendant violates Cal. Civ. Code §§ 1790 *et seq.* and Cal. Comm. Code  
8                   §§ 2313 and 2314, the common law, and the MMWA as alleged  
9                   throughout this Complaint, and in the Fourth, Fifth, and Sixth Causes of  
10                  Action, incorporated hereto by reference.

11               95. Defendant's acts and practices are fraudulent in that they have deceived and/or are  
12               likely to deceive Plaintiffs and members of the consuming public. Defendant knowingly sold  
13               Plaintiffs Washing Machines with Defects that have rendered the Washing Machines essentially  
14               unusable for the purposes for which they were purchased.

15               96. Plaintiffs relied upon Defendant's unfair, unlawful, and fraudulent business acts  
16               and practices - the material misrepresentations, omissions, and non-disclosures - to their detriment.

17               97. Plaintiffs have suffered injury in fact and have lost money as a result of  
18               Defendant's unfair competition in that they have overpaid for the Washing Machines, incurred  
19               Undisclosed Additional Operating Expenses, and/or would not have bought the Washing Machines  
20               had Defendant not misrepresented and failed to disclose that the Washing Machines' are unable to  
21               effectively self clean, that they have a propensity to accumulate and/or develop Biofilm, Foul  
22               Odors, and the Mold Problem, and that owners of the Machines will have to spend money for the  
23               Undisclosed Additional Operating Expenses.

24               98. Plaintiffs seek an order of this Court awarding restitution, injunctive relief and all  
25               other relief allowed under Section 17200, *et seq.*, plus interest, attorneys' fees, and costs.

26               ///

27               ///

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1 **SECOND CAUSE OF ACTION**

2 **Asserted On Behalf of the California Class**  
3 **(Violations of Cal. Bus. & Prof. Code § 17500 *et seq.*)**

4 99. Representative Consumer Frutkoff repeats and re-alleges all prior paragraphs and  
5 incorporates them as if fully set forth herein.

6 100. Gary Frutkoff brings this cause of action on behalf of himself and the California  
7 Class, pursuant to California Business and Professions Code, §17500, *et seq.*

8 101. Defendant is a "person" as defined by Cal. Bus. & Prof. Code § 17506.

9 102. Defendant falsely advertised the performance, uses, benefits, characteristics, and  
10 the quality, grade and standard of the Washing Machines by, *inter alia*, representing that the  
11 Washing Machines are "washers" or "machines that wash" or "washing machines" as these terms  
12 and phrases are normally understood, and by representing that operating the "System Clean",  
13 "Clean Washer", "deep clean sanitize", and/or "Sanitize" cycles on Electrolux Sanitary Models  
14 would result in the Washing Machines being sanitized, the Clothes washed in the Washing  
15 Machines being made sanitary and that by sanitizing the Washing Machines, any bacteria in the  
16 Washing Machines before the sanitizing cycles were run would not be carried forward to Clothes  
17 washed in the Machines after the operation of the sanitizing cycles.

18 103. Defendant also falsely advertised by failing to disclose the material facts that the  
19 Washing Machines would accumulate Biofilm, and develop Foul Odors and the Mold Problem,  
20 would require Extraordinary Actions to try to prevent these problems, and would cause Plaintiffs to  
21 incur Undisclosed Additional Operating Expenses.

22 104. These and other representations and omissions, as more fully described above, have  
23 deceived and are likely to deceive Plaintiffs.

24 105. Mr. Frutkoff and members of the California Class relied upon these material  
25 misrepresentations and omissions to their detriment.

26 106. Defendant's above-described false and misleading advertising continues to this day  
27 and present a threat to the general public in that Defendant has not acknowledged its wrongdoing  
28 to consumers, publicly issued an appropriate conspicuous notice to existing or prospective

1 purchasers of its Washing Machines, or disclosed the presence of the Defects, Biofilm, Foul Odors,  
2 the Mold Problem and Undisclosed Additional Operating Expenses, all of which resulted in  
3 Plaintiffs being deceived and mislead.

4 107. As a result of the above-described conduct, Defendant has been, and will continue  
5 to be unjustly enriched at the expense of Plaintiffs.

6 108. Had Plaintiffs known of the Defects, they would not have purchased the Washing  
7 Machines, would have paid less for them, or would have purchase alternative washing machines.  
8 As such, Plaintiffs did not receive the benefit of the bargain.

9 109. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17535, Plaintiffs seek an order 1)  
10 requiring Defendant to immediately cease the unlawful, unfair, and or fraudulent business acts  
11 and/or practices and false and misleading advertising complained of herein; 2) enjoining Defendant  
12 from continuing to misrepresent the Washing Machines' uses, benefits, characteristics, standard,  
13 quality and grade by omitting from its advertising and communications which explain that the  
14 Washing Machines develop Biofilm, Foul Odors, the Mold Problem and cause their owners to  
15 incur Undisclosed Additional Operating Expenses; and 3) requiring Defendant to repair or replace  
16 the Washing Machines or provide full restitution to Plaintiffs and Class members of all monies  
17 wrongfully acquired by means of such acts of unfair competition and false advertising, plus interest  
18 and attorneys' fees.

19  
20 **THIRD CAUSE OF ACTION**

21 **Asserted on Behalf of the California Class**  
22 **(Violations of the California Consumer Legal Remedies Act)**

23 110. Consumer Representative Frutkoff repeats and re-alleges all prior paragraphs and  
24 incorporates them as if fully set forth herein.

25 111. Consumer Representative Frutkoff seeks to recover on behalf of the California  
26 Class for Defendant's violation of the California Consumer Legal Remedies Act ("CLRA"),  
27 California Civil Code §§ 1750 *et seq.*

1 112. At all times relevant hereto, Plaintiffs were "consumer[s]" as that term is defined in  
2 Civ. Code § 1761(d).

3 113. At all times relevant hereto, the Machines constituted "goods" as that term is  
4 defined in Civ. Code § 1761(a).

5 114. At all times relevant hereto, Defendant constituted a "person" as that term is  
6 defined in Civ. Code § 1761(c).

7 115. At all times relevant hereto, Plaintiffs' purchases of Defendant's Washing  
8 Machines and replacement parts constituted a "transaction" as that term is defined in Civ. Code §  
9 1761(e).

10 116. At all times relevant hereto, Defendant provided "services" to Plaintiffs within the  
11 meaning of Civil Code § 1761(b).

12 117. The CLRA provides in relevant part that "[t]he following unfair methods of  
13 competition and unfair or deceptive acts or practices undertaken by any person in a transaction  
14 intended to result or which results in the sale or lease of goods or services to any consumer are  
15 unlawful: (5) Representing that goods . . . have . . . characteristics, uses, benefits . . . which they do  
16 not have; ... (7) Representing that goods ... are of a particular standard, quality or grade . . . if they  
17 are of another; ... and (9) Advertising goods ... with intent not to sell them as advertised; Civil  
18 Code §§ 1770(a)(5),(7), and (9).

19 118. Defendant made uniform written representations that the Washing Machines are  
20 high quality products that will perform as such and, as set forth above, made specific  
21 representations regarding the characteristics, uses, benefits, standards, and quality of the Washing  
22 Machines that were false, deceptive and/or misleading, and in violation of the CLRA.

23 119. Defendant intentionally concealed and/or failed to disclose the following material  
24 facts: a) the Machines have the Defects, b) the Defects cause Biofilm, the Foul Odors, the Mold  
25 Problem; c) Machine owners must undertake Extraordinary Actions to combat Biofilm, Foul  
26 Odors, and the mold Problem; and d) Machine owners will incur Undisclosed Additional  
27 Operating Expenses. This concealment was done for the purpose of inducing Consumer



1 Representative Frutkoff and members of the California Class into purchasing Defendant's Washing  
2 Machines.

3 120. The information Defendant concealed and/or did not disclose to Plaintiffs are  
4 material facts in that reasonable consumers expect their automatic clothes washers to clean clothes  
5 and reduce the time they spend on chores and thus would have considered the omitted facts  
6 important in deciding whether to purchase, or whether to pay the stated price for, the Washing  
7 Machines. Plaintiffs would have behaved differently by not buying the Washing Machines, not  
8 paying for repairs, and/or paying less for the Washing Machines, had they been aware of the  
9 material facts.

10 121. The omissions of material facts, as alleged above, are contrary to representations  
11 actually made by Defendant, including but not limited to, that the Washing Machines are  
12 "washers", "machines that wash", and "High Efficiency", clean or sanitize themselves and Clothes  
13 washed in them, are capable of "killing 99.9% of bacteria, with no carryover between loads" and  
14 therefore would actually clean Clothes. In addition, Defendant was obliged to disclose the material  
15 facts because: a) Defendant had exclusive knowledge of the material facts not known to Plaintiffs,  
16 since only Defendant had access to the aggregate data from its retailers, its own tests, and  
17 complaints from its customers; b) Defendant actively concealed and suppressed the material facts  
18 from Plaintiffs by not warning of the Defects at the time of purchase and by performing warranty  
19 and/or repair work that it knew would not cure the Defects unknown to Plaintiffs; c) by  
20 recommending remedies to complaining consumers that it knew would not cure the Defects or  
21 resulting problems, thereby causing damages; and/or d) Defendant recommended futile actions,  
22 such as advising Plaintiffs to run empty hot-water and bleach cycles, and wipe dry the door gasket,  
23 door glass and basket after every wash, but at the same time suppressed the material fact that the  
24 Machines had inherent defects that caused Biofilm, the Mold Problem and the Foul Odors.

25 122. Plaintiffs justifiably acted or relied to their detriment upon the concealment and/or  
26 non-disclosure of material facts as evidenced by their purchases of the defective Washing  
27 Machines.

28

123. Had Defendant disclosed to Plaintiffs, before they purchased their Machine, that the Machines had the inherent Defects, Plaintiffs would not have purchased the Washing Machines, would have paid less for them, or would have purchase alternative washing machines. As such, Plaintiffs did not receive the benefit of the bargain. Had Defendant disclose to Plaintiffs, at the time of making a warranty claim that the Machines were inherently defective and that replacement parts would not cure the Defects, Plaintiffs would not have paid for the replacement parts and or labor to install them.

124. Civil Code § 1780 (a)(2) permits any court of competent jurisdiction to enjoin practices that violate Civil Code § 1770. Plaintiff and Class members are also entitled to recover damages as provided by statute, as well as costs, attorney's fees, rescission, and other relief as is deemed appropriate.

125. Pursuant to Civil Code § 1782, Plaintiff Frutkoff notified Defendant in writing of the particular provisions of Civil Code § 1770 which it had violated and made a demand for corrective action. Plaintiff Frutkoff sent this notice by certified mail, return receipt requested, to Defendant's principal place of business. See Exhibit "6".

#### **FOURTH CAUSE OF ACTION**

##### **Asserted On Behalf of the California Class (Breach of Express Warranty under the Song Beverly Act, Cal. Civ. Code 1790 *et seq.*, Cal. Comm. Code § 2313, and California Common Law)**

126. Consumer Representative Frutkoff repeats and re-alleges all prior paragraphs and incorporates them as if fully set forth herein.

127. Consumer Representative Frutkoff seeks recovery for the California Class for Defendant's breach of express warranty under the laws of the State of California.

128. Defendant warranted all of the Washing Machines against defects in materials or workmanship at a time when they knew that these Washing Machines suffered from the Defects and, nevertheless, continued to market and sell the Washing Machines with the express Warranties referenced above.

1           129. Defendant also warranted that the Washing Machines would clean Clothes by  
2 affirmation of fact. For example, as to Electrolux Sanitary Models, Defendant warranted that the  
3 Washing Machines were capable of cleaning themselves and/or killing 99.9% of bacteria as more  
4 fully described above.

5           130. These affirmations and promises created express warranties that the Washing  
6 Machines would operate properly and without defects and would conform to Defendant's  
7 affirmations and promises. Defendant's affirmations and promises became part of the basis of the  
8 bargains between Plaintiffs and Electrolux.

9           131. Defendant is obligated under the terms of its express Warranties to repair and/or  
10 replace the parts or materials that are the Defects in the Washing Machines sold to Plaintiffs,  
11 and/or to make the Washing Machines conform to the Warranty under the Song-Beverly Act, Civil  
12 Code § 1793.2(b) and (d), Cal. Comm. Code § 2313, and California Common Law.

13           132. Defendant breached its express warranties, as set forth above, by selling and  
14 supplying the Washing Machines in a condition which does not meet the warranty obligations  
15 undertaken by Defendant and by failing to repair or eliminate the Defects that are inherent in the  
16 Washing Machines or to cause the Washing Machines to conform to Defendant's Warranties after  
17 a reasonable number of repair attempts.

18           133. Defendant has received sufficient and timely notice of the breaches of warranties  
19 alleged herein. [See Warranty Breach Notice Letter – Attached as Exhibit "7"]. Despite this notice  
20 and Defendant's knowledge, Defendant refuse to honor its Warranties, even though it know the  
21 Defects exist in the Washing Machines and cause them to accumulate and develop Biofilm, Foul  
22 Odors, the Mold Problem and cause their owners to incur Undisclosed Additional Operating  
23 Expenses.

24           134. In addition, Defendant has received thousands of complaints and other notices from  
25 their customers throughout the United States which complaints notified Defendant that Plaintiffs  
26 Machines were experiencing Biofilm, the Foul Odors and the Mold Problem.

1 135. Even if notice were not given, or is somehow deemed defective, notice should be  
2 excused because of Defendant's knowledge of the Defects as alleged herein and because notice  
3 would have been and is futile as evidenced by EHP's policy and practice of not repairing or  
4 replacing the Washing Machines.

5 136. Plaintiff Frutkoff has complied with his obligations under the Warranty and the law  
6 and has given Defendant a reasonable opportunity to cure the breaches of their Warranties and  
7 Defendant failed to do so.

8 137. Defendant knew of its Warranty obligations to pay for new Washing Machines, as  
9 needed, because of the Defects in the Machines as described in this Complaint. However,  
10 Defendant has willfully refused to replace the Washing Machines. Therefore, Defendant is liable  
11 for damages, as well as civil penalties pursuant to Civil Code § 1794.

12 138. EHP's time limits on its express Warranties are unconscionable, since it knowingly  
13 and/or recklessly sold a defective product that was defective at the time of sale, without  
14 conspicuously informing consumers about the Defects and that the Defects caused the Washing  
15 Machines to develop Biofilm, the Foul Odors, the Mold Problem and their owners to incur  
16 Undisclosed Additional Operating Expenses. The time limits on the express Warranties are  
17 grossly inadequate to protect Plaintiffs. The Warranties were written by Defendant, without input  
18 of Plaintiffs; the term of the express Warranties unreasonably favor Defendant by unreasonably  
19 limiting the Warranty to 1-2 years on a product that is expected to last 10 or more years; a gross  
20 disparity in bargaining power existed as between Defendant and Plaintiffs; Plaintiffs had no  
21 meaningful choice in determining those time limitations; and Defendant knew or should have  
22 known that the Washing Machines were defective at the time of sale and would develop and  
23 accumulate Biofilm, Foul Odors and the Mold Problem before the end of their useful lives thereby  
24 rendering the time limitations in Defendant's express warranties insufficient, inadequate, and  
25 unconscionable.

26 139. As a proximate result of Defendant's breach of express Warranty, Plaintiffs have  
27 sustained damages and other losses in an amount to be determined at trial. Plaintiffs are entitled to



1 recover damages as provided by statute, as well as costs, attorneys' fees, rescission, and other relief  
2 as is deemed appropriate.

3  
4 **FIFTH CAUSE OF ACTION**

5 **Asserted On Behalf of the California Class**  
6 **(Breach of Implied Warranty under the Song Beverly Act,**  
7 **Cal. Civ. Code 1790 *et seq.* Cal. Comm. Code § 2314, and California Common Law)**

8 140. Plaintiff Frutkoff alleges and incorporates the above allegations by reference as if  
9 fully set forth herein.

10 141. Under California's Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1792 *et*  
11 *seq.*, every sale of consumer goods is accompanied by both a "manufacturer's and retailer's"  
12 implied warranty that the goods are merchantable.

13 142. The Washing Machines are "consumer goods" within the meaning of Cal. Civ.  
14 Code § 1791(a).

15 143. Defendant is a "manufacturer" within the meaning of Cal. Civ. Code §§ 1791(j).

16 144. Plaintiff Frutkoff bought a Frigidaire branded Washing Machine sold at retail in the  
17 State of California.

18 145. At the time of sale, and currently, Defendant is in the business of manufacturing and  
19 selling Washing Machines.

20 146. By operation of law, Defendant impliedly warranted to Plaintiffs that its Washing  
21 Machines were of merchantable quality and fit for the ordinary purposes for which they are used.

22 147. Defendant knowingly and/or recklessly sold a defective product without  
23 conspicuously informing consumers about the Defects. Defendant possessed actual superior  
24 knowledge of Biofilm, the Foul Odors, Undisclosed Extraordinary Operating Expenses and the  
25 Mold Problem based on pre-market testing, complaints posted on the internet, and complaints  
26 made to Defendant's call center and internet websites.

27 148. Defendant's waiver and/or limits on implied warranties are unconscionable, illegal,  
28 and unenforceable, since Plaintiffs had no meaningful choice in determining those time limitations;



1 the warranties were written by Defendant, without input of Plaintiffs; the Warranty  
2 overwhelmingly favors Defendant by unreasonably limiting the warranty to 1 year on a product  
3 that is expected to last over 10 years; a gross disparity in bargaining power existed as between  
4 Defendant and Class members; Defendant knew or should have known that the Washing Machines  
5 were defective at the time of sale and would accumulate Biofilm and develop the Foul Odors and  
6 the Mold Problem before the end of their useful lives, and Plaintiffs were unfairly surprised by the  
7 limitations.

8 149. Defendant breached the implied warranty at the time of sale.

9 150. Consumer Representative Frutkoff's Washing Machine became unfit for its  
10 ordinary purpose of cleaning Clothes during the implied warranty period because it accumulated  
11 Biofilm, produced Foul Odors, and developed the Mold Problem, causing the Clothes washed in  
12 his Machine to have a foul smell.

13 151. Defendant's Washers are not adequately contained, packaged, and/or labeled.

14 152. Plaintiffs were the intended third-party beneficiaries of the implied warranty made  
15 by Defendant. Defendant, who is the manufacturer of the Washing Machines knew that the  
16 retailers to whom it sold the Washing Machines were not going to own the Washing Machines any  
17 longer than it took to sell them to Plaintiffs. Further, Defendant intended that any warranty,  
18 whether express or implied, that applied to the Washing Machines were for the benefit of the  
19 Plaintiffs; who are the people that own and use the Washing Machines.

20 153. Defendant knew and intended that Plaintiffs were the ultimate beneficiaries of  
21 Defendant's implied warranties as they are the owners of the Washing Machines.

22 154. Defendants, who manufacture and market the Washing Machines, and/or  
23 sellers/resellers of the Washing Machines, had knowledge that Plaintiffs were the end users of the  
24 Washing Machines when Defendant entered into any and all sales contracts and subcontracts for  
25 the Washing Machines and Defendant's intent to benefit Plaintiffs arises by operation of law  
26 pursuant to the "implied covenant of good faith and fair dealing" contained within any and all sales  
27 contracts and subcontracts for the Washing Machines entered into by Defendants.

1 155. As a proximate result of Defendant's breach of implied warranty, Plaintiffs have  
2 sustained damages and other losses in an amount to be determined at trial. Plaintiffs are entitled to  
3 recover damages and attorneys' fees as provided by statute, as well as costs, rescission, and other  
4 relief as is deemed appropriate.

5  
6 **SIXTH CAUSE OF ACTION**

7 **Asserted On Behalf of All State Classes**  
8 **(Violations of the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301 *et seq.*) –**  
9 **Breach of Written Warranty)**

10 156. The Consumer Representatives repeat and re-allege all prior paragraphs and  
11 incorporate them as if fully set forth herein.

12 157. The Washing Machines are "consumer products" as that term is defined under 15  
13 U.S.C. §2301(1).

14 158. Plaintiffs are "consumers" as that term is defined by 15 U.S.C. § 2301(3), and  
15 utilized the Machines for personal and household use and not for resale or commercial purposes.

16 159. EHP is a "warrantor" and "supplier" as those terms are defined by 15 U.S.C. §  
17 2301(4) and (5).

18 160. EHP provided Plaintiffs with "written warranties" as that term is defined by 15  
19 U.S.C. § 2301(6).

20 161. In its capacity as a warrantor, and by the conduct described herein, any attempt by  
21 EHP to limit the express warranties in a manner that would exclude coverage for the Defects in the  
22 Washing Machines is unconscionable and any such effort to disclaim, or otherwise limit, liability  
23 for its defective Washing Machines is null and void as alleged above.

24 162. This Court has jurisdiction over this cause of action under 28 U.S.C. 1332.

25 163. By EHP's conduct as described herein, including EHP's knowledge of the Defects  
26 in the Washing Machines and its action, and inaction, in the face of that knowledge, EHP has  
27

1 failed to comply with its obligations under its written and implied promises, Warranties, and  
2 representations.

3 164. Plaintiffs fulfilled their obligations under the Warranties.

4 165. As a result of Defendant's breach of express warranties, Plaintiffs are entitled to  
5 revoke their acceptance of the Washing Machines, obtain damages and equitable relief, and obtain  
6 attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

7  
8 **SEVENTH CAUSE OF ACTION**

9 **Asserted On Behalf Of All State Classes**  
10 **(Unjust Enrichment)**

11 166. The Consumer Representatives repeat and re-allege all prior paragraphs and  
12 incorporate them as if fully set forth herein.

13 167. At all relevant times relevant hereto, Defendant manufactured and sold the Washing  
14 Machines with the Defects as alleged herein.

15 168. Defendant has been unjustly enriched by Plaintiffs' purchases of the Washing  
16 Machines.

17 169. Plaintiffs unknowingly conferred a benefit, directly and indirectly, on Defendant to  
18 their detriment through the purchase of the Washing Machines, replacement parts through  
19 Electrolux's customer service personnel or third party authorized Electrolux service agencies, and  
20 Glisten Dishwasher cleaner through Frigidaire's website as directed by Electrolux' customer  
21 service personnel, of which Defendant had knowledge, since Defendant was aware of the presence  
22 of the Defects in the Washing Machines and that the Defects caused the Machines to develop  
23 Biofilm, the Foul Odors, the Mold Problem and cause their owners to incur Undisclosed  
24 Additional Operating Expenses. However, Defendant failed to disclose this material information  
25 and misled Plaintiffs regarding the nature, benefits, characteristics, and quality of the Washing  
26 Machines while profiting from this deception.

170. The circumstances are such that it would be inequitable, unconscionable and unjust to permit Defendant to retain the benefit of these funds that it unfairly obtained from Plaintiffs. Defendant would be unjustly enriched if they were allowed to retain such funds and, therefore, a constructive trust should be imposed on all monies wrongfully obtained by Defendant and the money should be ordered returned to Plaintiffs.

### **EIGHTH CAUSE OF ACTION**

#### **Asserted On Behalf Of The Florida Class (Violation of the Florida Deceptive and Unfair Trades Practices Act, Fla. Stat. § 501.201 *et seq.*)**

171. Consumer Representative Fox-Isicoff repeats and re-alleges all prior paragraphs and incorporates them as if fully set forth herein.

172. Consumer Representative Fox-Isicoff brings this cause of action against Defendant pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

173. FDUTPA prohibits, *inter alia*, any unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

174. Consumer Representative Fox-Isicoff and members of the Florida Class are "consumers" as that term is defined in Fla. Stat. Ann § 501.211.

175. Defendant is a "person" as that term is defined in Fla. Stat. Ann. § 1.01(3).

176. Plaintiffs reasonably expected their Washing Machines not to accumulate Biofilm, develop Foul Odors and the Mold Problem, and cause them to incur Additional Undisclosed Operating Expenses.

177. Defendant developed, marketed and sold the Defective Washing Machines. The Washing Machines are Defective as explained in detail above.

178. At all relevant times related hereto, Defendant knew of or recklessly disregarded the Defects and knew or recklessly disregarded that their statements and omissions of material facts were false or misleading as alleged above.

1 179. Electrolux violated the FDUTPA by concealing from Plaintiffs the existence of the  
2 Defects, concealing materials facts such as the Washing Machines' propensity to accumulate  
3 Biofilm, develop Foul Odors, and the Mold Problem, or cause them to incur Additional  
4 Undisclosed Operating Expenses, and misrepresenting the Electrolux Sanitary Models' abilities to  
5 clean and/or sanitize themselves, and Clothes washed in them.

6 180. Defendant's representations and omissions did deceive, and are likely to deceive  
7 reasonable consumers, and reasonable consumers would have relied on these representations and  
8 omissions.

9 181. Had Defendant disclosed all material information regarding the Washing Machines  
10 to Plaintiffs, they would not have purchased the Washing Machines, or would have paid less for  
11 them.

12 182. As a proximate result of Defendant's wrongful conduct, Plaintiffs lost money by  
13 overpaying for the Machines, paying for repairs and/or Undisclosed Additional Operating  
14 Expenses, and through diminution in value of their Washing Machines and are entitled to recover  
15 such damages, together with appropriate exemplary damages, attorneys' fees and costs of suit.

16  
17 **NINTH CAUSE OF ACTION**

18 **Asserted on Behalf of the Florida, Maryland, Michigan, New York, Oregon,**  
19 **Pennsylvania, and Texas Classes**  
20 **(Breach of Express Warranties)**

21 183. Representative Consumers Tammy Fox-Isicoff, Steve and Jennifer Schroder, Isaac  
22 and Gail Walkover, Daniel and Shelena Hunter, Charles and Rosemary Overly, and Glenn and  
23 Deirdre Dickerson repeat and re-allege all prior paragraphs and incorporate them as if fully set  
forth herein.

24 184. This cause of action is brought on behalf of the Florida, Maryland, Michigan, New  
25 York, Oregon, Pennsylvania, and Texas Classes.

26 ///

27 ///



1 185. EHP expressly warranted all of the Washing Machines against defects in materials  
2 and workmanship when it knew that the Washing Machines were defective, but continued to  
3 market and sell them with the express Warranties attached hereto as exhibits.

4 186. Defendant also made affirmations of fact and promises to Plaintiffs which related to  
5 the Washing Machines as more fully described herein.

6 187. These affirmations and promises created express warranties that the Washing  
7 Machines would operate properly and without defects and would conform to Defendant's  
8 affirmations and promises. Defendant's affirmations and promises became part of the basis of the  
9 bargains between consumers and Defendants.

10 188. EHP has breached its express Warranties, as set forth above, by supplying the  
11 Washing Machines in a condition that does not meet the Warranty obligations undertaken by EHP,  
12 and by failing to repair or replace the defects and/or defective parts such that the Machines do not  
13 accumulate Biofilm, or develop Foul Odors or the Mold Problem.

14 189. EHP's warranty fails in its essential purpose and, accordingly, Plaintiffs and  
15 members of the Classes cannot and should not be limited to the remedies set forth in EHP's written  
16 warranty. Instead, Plaintiff should be permitted to recover all measure of appropriate relief.

17 190. EHP has received sufficient and timely notice of the breaches of warranty alleged  
18 herein. EHP also has actual and constructive notice of its breach due to notorious litigation  
19 involving similarly designed washing machines that are pending against other front-loading  
20 washing machine manufacturers.

21 191. Plaintiffs have notified Defendant of the Defects in their Machines and the presence  
22 of the Foul Odors and the Mold Problem and afforded it a reasonable opportunity to cure the  
23 Defects, but Defendant has failed to provide Plaintiffs a sufficient repair to eliminate the defects  
24 and resulting problems, or replacement Machines that conform to the qualities and characteristics  
25 that Defendant warranted when it sold the Washing Machines.

26 192. EHP has failed and refused to honor its Warranty obligations, even though it knows  
27 of the Defects inherent in the Washing Machines.

28 193. Plaintiffs relied on Defendant's express Warranties to their detriment.

1 194. As a result of Defendant's breach of express Warranties, Plaintiffs have suffered  
2 damages in an amount to be determined at trial

3  
4 **TENTH CAUSE OF ACTION**

5 **Asserted on Behalf of the Florida, Maryland, Michigan, New York, Oregon, Pennsylvania,**  
6 **and Texas Classes**  
7 **(Breach of Implied Warranty of Merchantability)**

8 195. Representative Consumers Tammy Fox-Isicoff, Steve and Jennifer Schroder, Gail  
9 and Isaac Walkover, Daniel and Shelena Hunter, Charles and Rosemary Overly, and Glenn and  
10 Deirdre Dickerson repeat and re-allege all prior paragraphs and incorporate them as if fully set  
11 forth herein.

12 196. Defendant is a "merchant" pursuant to Uniform Commercial Code § 2-314 and  
13 relevant Florida, Maryland, Michigan, New York, Oregon, Pennsylvania, and Texas statutes.

14 197. Defendant impliedly warrants that the Washing Machines are merchantable and fit  
15 for their ordinary use at the time they leave Defendant's control.

16 198. Because the Washing Machines are sold with Defects, accumulate Biofilm, develop  
17 Foul Odors and the Mold Problem, and require Extraordinary Actions that cost their owners  
18 Undisclosed Additional Operating Expenses, the Washing Machines are unfit and unmerchantable  
19 when sold for their ordinary use as automatic Clothes washers.

20 199. Defendant has not validly disclaimed, excluded, or modified the implied warranties  
21 and/or duties described herein, and/or any attempted disclaimer or exclusion of the same was and is  
22 void, illegal, and ineffectual.

23 200. As a direct and proximate result of Defendant's breach of implied warranty,  
24 Plaintiffs have suffered actual damages in the form of diminished value of their machines, costs of  
25 repair, and costs at attempting the futile remedies recommended by Defendants.

26 201. Upon information and belief, as documented in Defendant's own business records,  
27 Defendant had notice that the Washing Machines were not merchantable at the time of sale and/or  
28 within a reasonable time after the latent Defects manifested themselves to Plaintiffs.

1           202. Representative Consumers Tammy Fox-Isicoff, Steve and Jennifer Schroder, Isaac  
2 and Gail Walkover, Daniel and Shelena Hunter, Charles and Rosemary Overly, and Glenn and  
3 Deirdre Dickerson on behalf of themselves and all others similarly situated, demand judgment  
4 against Defendant for damages in an amount to be proven at trial, plus attorneys' fees, interest and  
5 costs.

6                                   **ELEVENTH CAUSE OF ACTION**

7                                   **Asserted on Behalf of the Maryland Class**  
8                                   **(Violation of the Maryland Consumer Protection Act,**  
9                                   **Md. Code Ann., Com. Law § 13-101)**

10           203. Consumer Representatives John and Samantha Eddy repeat and re-allege all prior  
11 paragraphs and incorporate them as if fully set forth herein.

12           204. Consumer Representatives John and Samantha Eddy are "consumers" and  
13 "persons" within the meaning of Md. Code Ann., Com. Law § 13-101(c) and (h); Defendant is a  
14 "merchant" within the meaning of Md. Code Ann., Com. Law § 13-101(f).

15           205. The Washing Machines are "consumer goods" and "merchandise" within the  
16 meaning of Md. Code Ann., Com. Law § 13-101(d) and (f).

17           206. The Maryland Consumer Protection Act proscribes any "[f]alse, falsely disparaging,  
18 or misleading oral or written statement, visual description, or other representation of any kind  
19 which has the capacity, tendency, or effect of deceiving or misleading consumers" in connection  
20 with sale of consumer goods." Md. Code Ann., Com. Law § 13-301(1);

21           207. The Maryland Consumer Protection Act also proscribes "any representation that...  
22 [c]onsumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory,  
23 characteristic, ingredient, use, benefit, or quantity which they do not have"; and "[c]onsumer  
24 goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or  
25 model which they are not." Md. Code Ann., Com. Law § 13-301(2)(i) and (2)(iv).

26           208. The Maryland Consumer Protection Act also proscribes as unfair and deceptive  
27 trade practices: "[f]ailure to state a material fact if the failure deceives or tends to deceive;  
28 [a]dvertisement or offer of consumer goods... [w]ithout intent to sell... them as advertised or

1 offered; [k]nowingly false statement that a service, replacement, or repair is needed; [d]eception,  
2 fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or  
3 omission of any material fact with the intent that a consumer rely on the same in connection with  
4 ... [t]he promotion or sale of any consumer goods, consumer realty, or consumer service... or [t]he  
5 subsequent performance of a merchant with respect to an agreement of sale. Md. Code Ann., Com.  
6 Law § 13-301(3),(5)(1), (7), (9)(i) and (9)(iii).

7 209. Defendant falsely represented material facts regarding the Machines which misled  
8 the Eddys and members of the Maryland Class as more fully alleged herein.

9 210. Defendant misrepresented the characteristics, uses, benefits, standard, quality, and  
10 grade of the Machines as alleged herein.

11 211. Defendant failed to disclose that the Washing Machines have a high propensity to  
12 accumulate Biofilm, Foul Odors and the Mold Problem and require Extraordinary Actions which  
13 cause their owners to incur Undisclosed Additional Operating Expenses.

14 212. Defendant advertised the Machines without the intent to sell them as advertised as  
15 alleged herein.

16 213. Defendant falsely advised the Eddys and other members of the Maryland Class that  
17 service, replacement, and or a repair to the Machines is needed by sending replacement door  
18 gaskets which would require Machine owners to incur the cost of labor to install the new door  
19 gaskets while Defendant knew that new door gaskets would not remedy the accumulation of  
20 Biofilm, and development of Foul Odors and the Mold Problem.

21 214. Defendant intentionally deceived the Eddys and members of the Maryland Class by  
22 misrepresenting and/or omitting material facts in connection with the sale of the Washing  
23 Machines as alleged herein in violation of Md. Code Ann., Com. Law § 13-301(9)(i). Defendant  
24 also violated Md. Code Ann., Com. Law § 13-301(9)(iii) by falsely representing to the Eddys and  
25 Maryland Class members that the Washing Machines were not defective, recommending futile  
26 Extraordinary Actions, and advising replacement and repairs, such as new door gaskets, that  
27 Electrolux knew would not cure the problems, all in breach of Defendant's Warranty agreements.



215. Defendant knew of the falsity of its representations of fact and/or omissions and intended to induce reliance by the Eddys and members of the Maryland Class as alleged herein.

216. As a result of Defendant's conduct, Consumer representatives John and Samantha Eddy and members of the Maryland Class did not receive the benefit of the bargain because they overpaid for the Machines.

217. As a result of Defendant's conduct, Consumer representatives John and Samantha Eddy and members of the Maryland Class lost money through the diminution in value of their Machines, as well as money spent on Undisclosed Additional Operating Expenses.

218. Consumer Representatives John and Samantha Eddy and members of the Maryland Class seek restitutionary and injunctive relief, as well as damages, costs and attorneys fees.

## **TWELFTH CAUSE OF ACTION**

### **Asserted on Behalf of the Michigan Class (Violation of the Michigan Consumer Protection Act, M.C.L.A § 445.901 *et seq.*)**

219. Consumer Representatives Steve and Jennifer Schroder repeat and re-allege all prior paragraphs and incorporate them as if fully set forth herein.

220. This cause of action is brought against Defendant pursuant to the Michigan Consumer Protection Act ("MCPA"), § 445.901 *et seq.*

221. Defendant is a "person" as that term is defined by M.C.L.A § 445.902(d).

222. Defendant's sale of the Washing Machines, repair services, and Glisten Dishwasher Cleaner were acts that occurred in or affect "trade or commerce" as those terms are defined by M.C.L.A § 445.902(g).

223. Defendant developed, marketed and sold the defective Washing Machines. The Washing Machines had Defects within them at the time they were sold by Defendants. The Washing Machines are defective as set forth above in this complaint.

224. The MCPA prohibits "unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce" including "(a) causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services...;



1 (c) representing that good have sponsorship, approval, characteristics, ... uses, benefits... that they  
2 do not...; (e) representing that goods or services are of a particular standard, quality, or grade ..., if  
3 they are of another...; (g) advertising or representing goods or services with intent not to dispose of  
4 those goods or services as advertised or represented...; (p) disclaiming or limiting the implied  
5 warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously  
6 disclosed...(s) failing to reveal a material fact, the omission of which tends to mislead or deceive  
7 the consumer, and which fact could not reasonably be known by the consumer...; (cc) failing to  
8 reveal facts that are material to a transaction in light of other representations of fact made in a  
9 positive manner.”

10 225. Defendant violated these subsections of the MCPA by concealing from Plaintiffs  
11 the existence of the Defects, concealing material facts such as the Washing Machines’ propensity  
12 to accumulate Biofilm, develop Foul Odors, and the Mold Problem, or cause their owners to incur  
13 Additional Undisclosed Operating Expenses, misrepresenting the Washing Machines as “washers”  
14 or “machines that wash”, misrepresenting the Electrolux Sanitary Models’ abilities to clean and/or  
15 sanitize themselves, and Clothes washed in them, and breaching express and implied warranties.

16 226. The omissions of material facts were important to the transactions and would have  
17 affected Plaintiffs’ decision to enter into the transaction in that Plaintiffs either would not have  
18 purchased the Machines or would have paid less for them and thus have suffered an ascertainable  
19 loss. The omissions of material fact were not reasonably discoverable by Plaintiffs prior to the  
20 time of purchase.

21 227. Defendant had knowledge of or recklessly disregarded the Defects and falsity of  
22 their representations at all relevant times as alleged herein.

23 228. Defendant’s misrepresentations and omissions did deceive and are likely to deceive  
24 the Schrodgers and reasonable consumers, and reasonable consumers would have relied and did rely  
25 on these misrepresentations and omissions.

26 229. Defendant’s acts and practices are the actual and proximate cause of Plaintiffs’  
27 damages. As such, Plaintiffs request relief under the MCPA, including actual damages, interest,  
28 attorneys’ fees, and cost.

**THIRTEENTH CAUSE OF ACTION**

**Asserted on Behalf of the New York Class  
(Violations of § 349 of New York General Business Law: Deceptive Acts and Practices)**

230. Consumer Representatives Isaac and Gail Walkover repeat and reallege all prior paragraphs and incorporate them as if fully set forth herein.

231. NY GBL § 349 makes unlawful any deceptive act or practice, including false advertising, in the conduct of any trade or commerce or in the furnishing of any service in New York.

232. The Walkovers are consumers who purchased their Washing Machines in New York and bring this action pursuant to NY GBL § 349 on behalf of themselves and all New York residents that purchased the Washing Machines.

233. Defendant has engaged in deceptive practices through misrepresentations and omissions of material facts directed at the Walkovers and members of the New York Class, as more fully described above, in connection with the sale of Washing Machines that have inherent Defects that cause them to accumulate Biofilm, develop the Mold Problem and emit Foul Odors and cause their owners to incur Undisclosed Additional Operating Expenses. Electrolux also has denied and continues to deny valid Warranty claims and instead suggests futile, costly, and inefficient Extraordinary Actions that cause New York Class members to incur Undisclosed Additional Operating Expenses.

234. Defendant's misrepresentations and omissions are likely to mislead and did materially mislead the Walkovers and reasonable consumers by causing them to purchase machines that they would not have purchased (or would have paid less for) and to pay for Undisclosed Additional Operating Expenses, but for Defendant's misrepresentations and omissions.

235. Defendant made numerous misrepresentations and omitted material facts upon which the Walkovers and members of the New York Class relied to their detriment.

236. The unfair and deceptive trade practices have directly, foreseeably, and proximately caused damages and injury to the Walkovers and members of the New York Class as described above.

1 237. Plaintiffs seek to enjoin Defendant's deceptive conduct, as well as damages and  
2 attorneys' fees, and all other relief available under NY GBL § 349.

3  
4 **FOURTEENTH CAUSE OF ACTION**

5 **Asserted on Behalf of the Oregon Class**  
6 **(Violations of the Oregon Revised Statutes § 646.605 *et seq.*)**

7 238. Consumer Representatives Daniel and Shelena Hunter repeat and re-allege all prior  
8 paragraphs and incorporate them as if fully set forth herein.

9 239. Consumer Representatives Daniel and Shelena Hunter bring this cause of action on  
10 behalf of themselves and all similarly situated Oregon consumers.

11 240. Defendant is a "person" as defined by Oregon Revised States ("ORS") §  
12 646.605(4), the Washing Machines are "goods" as defined by ORS § 646.605(6), and Defendant  
13 sold, advertised, distributed, and marketed the Washing Machines in "trade" and "commerce" as  
14 defined by ORS § 646.605(8), and has employed "unconscionable tactics" as defined by ORS §  
15 646.605(9).

16 241. Consumer Representative Daniel and Shelena Hunter purchased their Washing  
17 Machine for personal, family, and/or household purposes.

18 242. Defendant violated ORS § 646.607(1) and (2) by, as more fully alleged above, not  
19 disclosing the Washing Machines' Defects and the material facts that the Washing Machines  
20 accumulate Biofilm, develop the Mold Problem and emit Foul Odors. Electrolux also failed to  
21 disclose the material facts that the Washing Machines require Extraordinary Actions that cause  
22 Class members to incur Undisclosed Additional Operating Expenses.

23 243. ORS § 646.608 makes the following practices unlawful: (e) represent[ing] that...  
24 goods or services... have sponsorship, approval, characteristics... uses, benefits or qualities that  
25 they do not have...; (g) represent[ing] that... goods or services... are of a particular standard,  
26 quality, or grade... if they are of another; (i) advertising ... goods or services... with intent not to  
27 provide them as advertised...; and (t) concurrent with tender or delivery of any... goods or services  
28 fails to disclose any known material defect or material nonconformity.

244. Defendant violated these and other subsections of ORS § 646.608, as more fully alleged above, by willfully concealing from Plaintiffs the existence of the Defects, and material facts that the Washing Machines have a propensity to accumulate Biofilm, develop the Mold Problem, Foul Odors, and cause Machine owners to incur Undisclosed Additional Operating Expenses in taking Extraordinary Actions related to maintaining the Machines; willfully misrepresenting the Washing Machines as “washers” or “machines that wash”, and willfully misrepresenting the Electrolux Sanitary Models’ abilities to clean and/or sanitize themselves, and Clothes washed inside them.

245. Defendant’s misrepresentations and omissions are likely to deceive, and did deceive the Hunters and members of the Oregon Class.

246. The Hunters and Oregon Class members relied on Defendant’s omissions of material facts, and misrepresentations to their detriment.

247. The Hunters and Oregon Class members suffered an ascertainable loss of money as a direct and proximate result of Defendant’s conduct in that they would not have purchased the Washing Machines, or would have paid less for them had they known of the Defects and omitted material facts prior to purchase, and their Washing Machines’ value has diminished now that the Defects and facts are known.

248. The Hunters discovered Defendant’s unlawful methods, acts, and or practices on or about February 1, 2010.

249. Plaintiffs seek to enjoin Defendant’s unlawful conduct, as well as restitution, actual damages, punitive damages, and attorneys fees, and costs pursuant to ORS § 646.638.

#### **FIFTEENTH CAUSE OF ACTION**

#### **Asserted on Behalf of the Pennsylvania Class (Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Const. St § 201-1 *et seq.*)**

250. Consumer Representatives Charles and Rosemary Overly repeat and re-allege all prior paragraphs and incorporate them as if fully set forth herein.



1           251. This cause of action is brought against Defendant for unfair, deceptive and unlawful  
2 trade practices pursuant to 73 Pa. Const. St § 201-1 *et seq.*

3           252. Defendant is a “person” as defined by 73 Pa. Const. St § 201-2(2).

4           253. Defendant marketed and sold the Washing Machines within “trade” and  
5 “commerce” as defined by 73 Pa. Const. St § 201-2(3).

6           254. The Overlys and members of the Pennsylvania Class purchased the Washing  
7 Machines primarily for personal, family, or household purposes.

8           255. The Pennsylvania Unfair Trade Practices and Consumer Protection Law  
9 (“UTPCPL”) makes unlawful specific unfair methods of competition and unfair or deceptive acts  
10 or practices in the conduct of any trade or commerce, including: (v) representing that goods . . .  
11 have . . . characteristics, uses, benefits . . . which they do not have; ... (vii) representing that goods ...  
12 are of a particular standard, quality or grade . . . if they are of another; (ix) advertising goods ...  
13 with intent not to sell them as advertised; (xiv) failing to comply with the terms of any written  
14 guarantee or warranty given to the buyer at, prior to or after contract for the purchase of goods or  
15 services is made; and (xxi) engaging in any other fraudulent or deceptive conduct which creates a  
16 likelihood of confusion or of misunderstanding.

17           256. Defendant violated these sections of the UTPCPL, as alleged herein, by concealing  
18 from Plaintiffs the existence of the Defects and material facts that the Washing Machines’ have a  
19 propensity to accumulate Biofilm, develop the Mold Problem, Foul Odors, and cause Machine  
20 owners to incur Undisclosed Additional Operating Expenses in taking Extraordinary Actions  
21 related to maintaining the Machines; misrepresenting the Washing Machines as “washers” or  
22 “machines that wash”, and misrepresenting the Electrolux Sanitary Models’ abilities to clean  
23 and/or sanitize themselves, and Clothes washed inside them.

24           257. Defendant also violated the UTPCPL by not adequately repairing or replacing the  
25 defective washers, and misleading members of the Pennsylvania Class into believing that a door  
26 gasket replacement would cure the Foul Odors and Mold Problem and deceiving them into  
27 believing that their machines were repaired only long enough for the 1 year warranty to expire.





1           265. The Dickersons are "consumer(s)" as defined by Tex. Bus. & Com. Code §  
2 17.45(4).

3           266. Defendant marketed, advertised, distributed and sold the Washing Machines within  
4 "trade" and "commerce" as defined by V.T.C.A., Bus. & C. § 17.45(6).

5           267. The TDTPA makes unlawful the following acts and practices pursuant to Tex. Bus.  
6 & Com. Code § 17.46: (5) representing that goods have sponsorship, approval, characteristics, ...  
7 uses, benefits... which they do not have...; (7) representing that goods or services are of a  
8 particular standard, quality, or grade ..., if they are of another...; (9) advertising goods or services  
9 with intent not to sell them as advertised; (12) representing that an agreement confers or involves  
10 rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;  
11 (13) knowingly making false or misleading statements of fact concerning the need for parts,  
12 replacement, or repair service; (20) representing that a guarantee or warranty confers or involves  
13 rights or remedies which it does not have or involve...; (24) failing to disclose information  
14 concerning goods or services which was known at the time of the transaction if such failure to  
15 disclose such information was intended to induce the consumer into a transaction into which the  
16 consumer would not have entered had the information been disclosed.

17           268. The TDTPA also makes unlawful the breach of an express or implied warranty  
18 pursuant to Tex. Bus. & Com. Code § 17.50(a)(2).

19           269. Defendant violated the TDTPA by recklessly and/or intentionally failing to disclose  
20 to Plaintiffs the existence of the Defects and material facts that the Washing Machines have a  
21 propensity to accumulate Biofilm, develop the Mold Problem, Foul Odors, and cause Machine  
22 owners to incur Undisclosed Additional Operating Expenses in taking Extraordinary Actions  
23 related to maintaining the Machines thereby inducing Class members into purchasing the  
24 Machines; misrepresenting and advertising the Washing Machines as "washers" or "machines that  
25 wash", and misrepresenting and advertising the Electrolux Sanitary Models' abilities to clean  
26 and/or sanitize themselves, and Clothes washed inside them.

27           270. Defendant violated the TDTPA by issuing a warranty which represented that defects  
28 in materials and workmanship would be repaired or replaced when in fact they would not.

1           271. Defendant violated the TDTPA by knowingly making false and misleading  
2 statements of fact concerning the need for a replacement door gasket at the time Class members  
3 complained about Foul Odors and the Mold problem, since Frigidaire knew, as alleged herein, that  
4 a new door gasket would not and could not cure the Defects in the Washing Machines.

5           272. Defendant violated the TDTPA by breaching express and implied warranties as  
6 alleged herein.

7           273. The Dickersons and members of the Texas Class relied on Defendant's omissions  
8 and misrepresentations of materials facts to their detriment.

9           274. As a result of Defendant's numerous violations of the TDTPA, the Dickersons and  
10 Texas Class members lost money through the diminution in value of their Washing Machines, by  
11 overpaying for a defective product, and/or by incurring Undisclosed Additional Operating  
12 Expenses through the employment of Defendant's recommend, albeit futile, Extraordinary Actions.

13           275. Consumer Representatives Glenn and Deirdre Dickerson seek to enjoin Defendant's  
14 unlawful conduct, as well as damages, restitution, treble damages for knowing violations of the  
15 TDTPA, costs, pre-judgment interest, and attorneys' fees pursuant to Tex. Bus. & Com. Code §  
16 17.50.

17           276. Pursuant to Tex. Bus. & Com. Code §§ 17.505 and 17.501 the Dickersons sent a  
18 notice letter to Defendant and the Texas Attorney General Consumer Protection Division. See Ex.  
19 "8". Sixty (60) days have elapsed since Defendant received the notice letter.

20  
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment against the Defendant for the following:

23           1. An order certifying California, Florida, Maryland, Michigan, New York, Oregon,  
24 Pennsylvania, and Texas Classes and appointing Tammy Fox-Isicoff, Gary Frutkoff, Steve and  
25 Jennifer Schroder, Isaac and Gail Walkover, Daniel and Shelena Hunter, Charles and Rosemary  
26 Overly and Glenn and Deirdre Dickerson as representative Plaintiffs and their counsel, Stuart M.  
27 Eppsteiner of Eppsteiner & Fiorica Attorneys, LLP to be class counsel for the Classes;

1           2.     A constructive trust on and restitution of all amounts obtained by Defendant as a  
2 result of its misconduct, together with interest thereon from the date of payment, to the victims of  
3 such violations;

4           3.     All recoverable compensatory, punitive, and other damages sustained by Plaintiffs;

5           4.     Actual and/or statutory damages for injuries suffered by Plaintiffs in the maximum  
6 amount permitted by applicable law;

7           5.     An order (1) enjoining Defendant's wrongful, unlawful, fraudulent, deceptive, and  
8 unfair conduct as set forth above; (2) directing Defendant to engage in a corrective notice  
9 campaign; and (3) directing Defendant to repair the Washing Machines or refund to Plaintiffs the  
10 funds paid to Defendant for the defective Washing Machines;

11           6.     Statutory pre-judgment and post-judgment interest on any amounts;

12           7.     Payment of reasonable attorneys' fees and costs as may be allowable under  
13 applicable law; and

14           8.     Such other relief as the Court may deem just and proper.

15  
16           The Consumer Representatives, individually and on behalf of all others similarly situated,  
17 hereby demand a trial by jury on all issues so triable.

18 DATED: August 31, 2010

EPPSTEINER & FIORICA ATTORNEYS, LLP

19  
20  
21 By:

Stuart M. Eppsteiner, Esq.

Andrew J. Kubik, Esq.

# Exhibit F



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**In re: WHIRLPOOL CORP. FRONT-  
LOADING WASHER PRODUCTS  
LIABILITY LITIGATION**

**1:08-wp-65000**

**MDL No. 2001**

**Class Action**

**Judge: James S. Gwin**

**MASTER CLASS ACTION COMPLAINT**

Plaintiffs Gina Glazer, Chris and Trina Allison, Jeff Glennon, Mara Cohen, Karen P. Hollander, Jane Werman, Sonja Sandholm-Pound, Shannon Schaeffer, Bonnie Beierschmitt, Phil Torf, Sylvia Bicknell, Rebecca Nordan, Maggie O'Brien, Andrea Strong, Pramila Gardner, and Tracie Snyder (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this class action individually and on behalf of the Classes defined below (the "Classes" or collectively, the "Class"), against Whirlpool Corporation ("Whirlpool" or "Defendant"), to obtain relief, including, among other things, damages and injunctive relief.

2. This action is brought to remedy violations of law in connection with Whirlpool's design, manufacture, marketing, advertising, selling, warranting, and servicing of its Duet, Duet HT and Duet Sport Front-Loading Automatic Washers (the "Washing Machines" or "Machines"). These Washing Machines have serious design defects (collectively "Design Defects") that cause them to (a) accumulate mold and

mildew and/or residue or growth within the Washing Machines, (b) produce a moldy or mildewy odor that permeates the Washing Machines and/or consumers' homes, (c) produce a mold or mildew odor on clothes and other items washed in the Machines, (d) fail to clean the Machines and remove moisture, residue, growth and/or bacteria that lead to the formation of mold, mildew and/or associated foul odors; and (e) be unusable in the manner, to the extent to, and for the purpose for which the Washing Machines were advertised, marketed, and sold. The problems caused by the Design Defects are collectively referred to as "Mold Problems."

3. Plaintiffs assert claims for violations of the Ohio Consumer Sales Practices Act, O.R.C. § 1345.01 *et seq.*; tortious breach of warranty; negligent design and failure to warn; the Magnuson-Moss Act (15 U.S.C. §§2301-2312) with respect to Whirlpool's written and implied warranties; breach of express and implied warranty and unjust enrichment under various States' laws; and for violation of various States' Consumer Protection/Deceptive Practices acts.

### THE PARTIES

#### PLAINTIFFS

4. Plaintiff Gina Glazer is and at all relevant times has been a resident and citizen of Ohio.

5. Plaintiffs Chris and Trina Allison are and at all relevant times have been residents and citizens of Ohio.

6. Plaintiff Jeff Glennon is and at all relevant times has been a resident and citizen of New York.

7. Plaintiff Mara Cohen is and at all relevant times has been a resident and

citizen of New York.

8. Plaintiff Karen P. Hollander is and at all relevant times has been a resident and citizen of Florida.

9. Plaintiff Sylvia Bicknell is and at all relevant times has been a resident and citizen of Florida.

10. Plaintiff Jane Werman is and at all relevant times has been a resident and citizen of Illinois.

11. Plaintiff Phil Torf is and at all relevant times has been a resident and citizen of Illinois.

12. Plaintiff Sonja Sandholm-Pound is and at all relevant times has been a resident and citizen of New Jersey.

13. Plaintiff Shannon Schaeffer is and at all relevant times has been a resident and citizen of California.

14. Plaintiff Bonnie Beierschmitt is and at all relevant times has been a resident and citizen of New Jersey.

15. Plaintiff Rebecca Nordan is and at all relevant times has been a resident and citizen of Maryland.

16. Plaintiff Maggie O'Brien is and at all relevant times has been a resident and citizen of Indiana.

17. Plaintiff Andrea Strong is and at all relevant times has been a resident and citizen of Arizona.

18. Plaintiff Pramila Gardner is and at all relevant times has been a resident and citizen of Texas.

19. Plaintiff Tracie Snyder is and at all relevant times has been a resident and citizen of North Carolina.

20. As set forth below, each of the Plaintiffs purchased a Washing Machine for household purposes, and at all pertinent times used the Machine for its intended purpose with the use of the recommended high-efficiency ("HE") detergent, and each has been experiencing Mold Problems in the Machine and on items washed in the Machine. Plaintiffs provided Whirlpool with sufficient pre-suit notice of Mold Problems and unsuccessfully tried Whirlpool's various recommendations to fix the problems.

#### **WHIRLPOOL**

21. Whirlpool is a Delaware corporation and maintains its principal place of business at 2000 M-63 N, Benton Harbor, Michigan 49022.

#### **JURISDICTION AND VENUE**

22. This Court has subject matter jurisdiction under 28 U.S.C. §1332(d)(2) because the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and this is a class action in which the Class members and Whirlpool are citizens of different states.

23. Venue is proper in this judicial district under 28 U.S.C. §1391, because Whirlpool does business throughout this district and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. At all pertinent times, Whirlpool was and is in the business of marketing, advertising, distributing and selling products, including the Washing Machines, throughout Ohio and this judicial district, and nationwide, by and through various authorized dealers. The Washing Machines that form the basis of this Complaint were purchased from Whirlpool and/or from Whirlpool's

authorized dealers and placed in the stream of commerce by Whirlpool.

24. Furthermore, the United States Judicial Panel on Multidistrict Litigation has transferred all similar actions to this jurisdiction. Plaintiffs reserve their right to seek remand for trial of all actions transferred by the MDL Panel.

### **FACTUAL BACKGROUND**

#### **Facts Common To The Class**

25. Whirlpool holds itself out to the public as a manufacturer of safe, cutting-edge, and easy-to-use home appliances, including washing machines. Whirlpool is in the business of manufacturing, producing, distributing, and/or selling washing machines throughout the United States.

26. Whirlpool manufactured, produced, and/or distributed front-loading Washing Machines for sale by its network of authorized dealers including several leading retailers in the United States, such as Lowe's, Sears, Best Buy, PC Richard and Son, and other large retail chains.

27. Whirlpool provided Plaintiffs and each purchaser of the subject Washing Machines with an express one-year factory warranty as follows:

For one year from the date of purchase, when this major appliance is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation or Whirlpool Canada LP (hereafter "Whirlpool") will pay for Factory Specified Parts and repair labor to correct defects in materials or workmanship.

Whirlpool has these same obligations with respect to Plaintiffs and all Class members, but has failed to satisfy these obligations.

28. In recognition of the anticipated useful life of the Machines, Whirlpool also provided a "limited lifetime warranty on the stainless steel drum" for most of the



Whirlpool Duet and Duet HT Machines. This warranty stated that, “for the lifetime of the washer,” Whirlpool would “pay for FSP® (factory specified products), replacement parts for the Stainless Steel wash drum if defective in materials or workmanship.”

29. In conjunction with each sale, Whirlpool marketed, advertised, and warranted that the defective Washing Machines were of merchantable quality fit for the ordinary purpose for which such goods were used and were free from defects, or at a minimum would not cause Mold Problems.

30. Whirlpool also made express representations about the quality of its Washing Machines. For example, Whirlpool sold the Washing Machines as “High Efficiency” and labeled the Machines as “ENERGY STAR” compliant. ENERGY STAR is a voluntary labeling program designed to identify and promote energy-efficient products through a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy. Members of the Class have purchased the Washing Machines in part, on the basis that the Machines would save money and energy. In reality, at the recommendation of Whirlpool and independently, Class Members are having to run empty cycles of hot water and/or bleach and/or other products to combat the Mold Problems within the Machines. Further, as the Mold Problems became undeniable, Whirlpool began recommending that Machine owners run three successive washer cleaning cycles with an Affresh™ tablet in each cycle to ameliorate Mold Problems. Affresh is a product designed, manufactured, and marketed by Whirlpool specifically to address Mold Problems in Washing Machines. Upon information and belief, the ratings (Modified Energy Factor) provided by Whirlpool to the government entities are not taking into account the extra loads run through the Machines to try to

clean the Machines.

31. Whirlpool provides care instructions within the “Use & Care Guides” provided after the purchase and installation of the Washing Machines. None of the Use & Care Guides make any disclosure about any risk of Mold Problems when the recommended HE detergent is used as instructed. Whirlpool fails to inform consumers, through the Use & Care Guides or any other written disclosure, that even when consumers operate the Washing Machines as instructed by Whirlpool, Mold Problems will occur with virtually every machine, and that they will result regardless of washer maintenance, due to defects in the design of the Washing Machines.

32. Some of the Use & Care Guides only mention that “noticeable mold and mildew” issues may arise when using “regular” detergent rather than the recommended “HE” or “High Efficiency” detergent. Plaintiffs used the recommended HE detergent. Other Use & Care Guides suggest that Washing Machine owners leave the washer door open between uses to ameliorate “Washer odor.” That suggestion poses obvious safety risks to children and pets; indeed, a young child recently drowned in a Kenmore front-loading washing machine manufactured by Whirlpool, causing the U.S. Consumer Product Safety Commission to open an investigation regarding safety standards for front loaders. Despite following Whirlpool’s sometimes risky instructions, Plaintiffs all still experienced Mold Problems with their Washing Machines.

33. Each Washing Machine has a separate compartment/dispenser with a “fill line” for the recommended amount of liquid and/or powder HE detergent. Similarly, each Washing Machine has a separate compartment/dispenser with a “fill line” for the recommended amount of liquid fabric softener.

34. Plaintiffs and Class Members experienced, and continue to experience, Mold Problems even though they followed the instructions and recommendations by Whirlpool in its Use & Care Guide and elsewhere.

35. Whirlpool intended for customers to believe its statements and representations about its Washing Machines and to trust that its high-end Washing Machines were and are of first-rate quality. Whirlpool concealed material facts regarding the Washing Machines, including serious design defects, which cause the Washing Machines to (a) accumulate mold and mildew residue or growth within the Washing Machines, (b) produce a moldy or mildewy odor that permeates consumers' Machines and homes, (c) produce a mold or mildew odor on clothes washed in the Machines, and (d) be unusable in the manner, to the extent to, and for the purpose for which the Washing Machines were advertised, marketed, and sold, even though consumers used the Washing Machine as instructed by Whirlpool, including using HE detergent and fabric softener in the amounts instructed by Whirlpool.

36. The Washing Machines are defective in many respects. Due to those defects, the use of the Washing Machine—as instructed by Whirlpool—results in conditions creating an excessive propensity for the Washing Machines to accumulate mold and mildew, residue or growth and moldy odors. These defects include, among other things, (a) the failure of the Washing Machines to properly drain water and to avoid lingering moisture; (b) the failure of the Washing Machines to sufficiently rinse away HE detergent and liquid fabric softener to prevent the accumulation of residues that contribute to the formation of mold and mildew and moldy odors; (c) the failure of the Washing Machines to prevent the accumulation of residues and growths that contribute to

the formation of mold and mildew and moldy odors when products such as HE detergent and liquid fabric softener are used in the amounts instructed and recommended by Whirlpool; (d) the failure of the Washing Machines to have dispenser compartments that contain proper fill lines for HE detergent and liquid fabric softener to prevent the accumulation of residues that contribute to the formation of mold and mildew and moldy odors; and (e) the failure of the Washing Machines to clean themselves in a manner necessary for the proper functioning of the Machine for the purpose for which it was intended.

37. Upon information and belief, the defects in the stainless steel drums, which come with a lifetime warranty, also play a role in causing the Mold Problems. Due to the defects in the drums, *inter alia*, the Machines do not fully or properly drain in connection with each and every wash cycle and/or do not sufficiently permit the rinsing away and/or prevent the accumulation of residues and growths. As a result, the defects in the drums do not permit the Machines to clean themselves after each load. Defects in the door seal ("boot") also play a role in the accumulation of mold, mildew and/or foul odors. Among other things, the door seal does not fully or properly drain and/or remove residues and growths after each wash.

38. Whirlpool knew and was aware, or should have known and been aware, before marketing and selling the Washing Machines, that they were inherently defective because even when operated as instructed, the Machines were substantially likely to experience Mold Problems. Whirlpool nonetheless failed to warn its customers of the Design Defects inherent in the Washing Machines or the Mold Problems which would result from the alleged defects.

39. As a result of the Design Defects that have plagued and continue to plague the Washing Machines, Plaintiffs and the other Class members overpaid for the Machines. For the reasons detailed herein, moreover, Whirlpool knew or should have known that the value of the Washing Machines it was selling to consumers was significantly inflated by its misrepresentations and misleading information concerning those Machines. If Plaintiffs and the other Class members had known about the design defects affecting the Washing Machines, they would not have paid the significant sums that they paid for the Machines.

40. As a result of the mold or mildew odor that permeates items “washed” in the Machines, many consumers have been forced to re-wash or even replace clothes, towels and other items that have been ruined by the Design Defects in these Washing Machines.

41. Whirlpool has profited, either directly or indirectly, by concealing the nature of the Design Defects and misrepresenting the cause of the Mold Problems associated with the defects, which have enabled it (a) to sell the Washing Machines at premium prices, (b) to profit on repair services purportedly to fix the Mold Problems, (c) and to sell Whirlpool Washing Machine-related products such as Affresh (from which Whirlpool earns a profit) which it misrepresented as capable of addressing and resolving the Mold Problems arising from the defects at issue. In fact and in truth, Whirlpool has no effective remedy for the Design Defects and Mold Problems and has taken no action to correct the defects.

42. As a result of Whirlpool’s false and misleading statements and concealment, and Whirlpool’s other misconduct described in this Complaint, Plaintiffs



and the Class bought thousands of the Washing Machines and have suffered—and continue to suffer—injury as a result of the defective nature of these Washing Machines and as a result of Whirlpool's misconduct.

43. Far from being an innocuous or isolated defect or problem, in addition to Plaintiffs, thousands of other Washing Machine purchasers have complained directly (and indirectly) to Whirlpool and its authorized dealers and service personnel, and on Internet web sites about the Design Defects and Mold Problems with the Machines.

44. Indeed, the Internet is replete with references and complaints regarding the Washing Machines that mirror allegations in this Complaint. *See, e.g.*, <http://www.my3cents.com/productReview.cgi?compid=226&product=duet+washer;> [http://www.consumeraffairs.com/homeowners/whirlpool\\_washing\\_machine.html](http://www.consumeraffairs.com/homeowners/whirlpool_washing_machine.html)

45. As a result of the avalanche of consumer complaints regarding the defects that Whirlpool would not and/or could not remedy, several entrepreneurs created and marketed products designed to treat, eliminate and/or minimize the Mold Problems caused by the Design Defects in the Washing Machines. These products include SmellyWasher and NuFreshNow. Due to the widespread and intractable nature of the Mold Problems, these entrepreneurs have sold tens of thousands, if not hundreds of thousands, of units of their products to consumers. As further evidence of the serious nature of these problems, Proctor & Gamble recently created a new product called Tide Washing Machine Cleaner in an attempt to address these intractable Mold Problems.

46. Reflecting its knowledge that the Design Defects resulted in serious Mold Problems in its Washing Machines, Whirlpool developed a new product called Affresh™ to try and address these serious problems. As part of its marketing program for

Affresh™, in September 2007, Whirlpool finally disseminated information about the “potential” for buildup of “mold and mildew stains” in the washers and offered for sale Affresh™ tablets as an alleged solution to the problems. On the packaging for this product, Whirlpool represented that Affresh “[r]emoves odor-causing residue in HE Washers[,]” and “[u]sed once a month, it keeps your machine fresh and clean by removing the odor-causing residue that can build up in all HE Washers.” On its website affresh.com, Whirlpool admitted that Whirlpool Washing Machines “up to 1 year in age should be cleaned once a month with Affresh™ cleaner to prevent odor-causing residue from accumulating.” Despite its representations, Whirlpool’s Affresh™ failed to prevent and/or fix Mold Problems experienced by Plaintiffs and other class members.

47. Due to the ineffectiveness of Affresh™, Whirlpool modified Affresh™ and created and marketed an Affresh™ Washing Cleaner Kit that included Power Puck™ tablets and Grit Grabber™ cloths. On its Affresh website, Whirlpool represented that its Washing Machines “older than 1 year require special attention, particularly if odor has set in,” and that the Grit Grabber cloths were designed to “help remove the residue and odor you can’t reach with Power Puck Tablets.” Despite its representations, Whirlpool’s Affresh™ Washing Cleaner Kit also fails to prevent and/or fix the Mold Problems experienced by Plaintiffs and other class members.

48. Nonetheless, Whirlpool unjustly enriched itself through the sale of its Affresh™ products, while failing to remedy the defect.

49. The Washing Machines purchased by Plaintiffs and Class members failed to work due to a defect in design (which failure to work did not result from the ordinary course of usage by Plaintiffs or Class members).

50. On its website at affresh.com, Whirlpool admits that newer front-loading high efficiency Machines are more prone than older top-loading washers to build up residue that lead to odors. Despite this knowledge, Whirlpool failed to take the necessary steps to adequately design and/or test the Washing Machines to ensure that they were free from the Design Defects complained of herein. Instead, Whirlpool sold and continues to sell these Washing Machines even though it knew, or was reckless in not knowing, that they (a) contained inherent material defects; (b) were not of merchantable quality; and (c) would result in the formation of mold, mildew, residue or growth and moldy/mildewy and other foul odors, even when used as instructed.

51. Despite having repeated notice of the above-described Design Defects in its Washing Machines and despite the reasonable expectations of consumers created by Whirlpool's marketing of its Washing Machines, Whirlpool has engaged in the following routine, albeit wrongful course of conduct, where Whirlpool:

- a. Designed, manufactured and sold Washing Machines with Design Defects that cause Mold Problems;
- b. Failed to disclose that the Washing Machines had Design Defects that cause Mold Problems;
- c. Continued to represent expressly or by implication that the Washing Machines that Plaintiffs and Class Members purchased were dependable, cost effective, and would provide outstanding cleaning and performance as washing machines when it knew that these statements were false;
- d. Continued to manufacture, market, advertise, distribute, and sell the Washing Machines to consumers when it knew or should have known the Washing Machines were not dependable and would not withstand normal operation;
- e. Failed to disclose to consumers the substantial risk of Washing Machine failure and the material defects in the Washing Machines;

- f. Failed to disclose the nature of the defects to consumers;
- g. Failed to disclose the many complaints it received from consumers (or the high incidence of attempted but futile repairs of the Washing Machines);
- h. Failed to implement a recall to adequately announce, remedy, and correct the defects for consumers;
- i. Failed to disclose to consumers that Whirlpool was not committed to making effective repairs under its warranties to address Mold Problems;
- j. Failed to take action to correct its omissions or false or misleading implied or express representations about the use, efficacy, qualities, and benefits of its Washing Machines; and
- k. Failed to disclose that despite following the recommended procedures within the Whirlpool Use & Care Guide, consumers would still experience Mold Problems.

52. By engaging in the foregoing course of conduct, Whirlpool has caused consumers—including Plaintiffs and Class Members—to be aggrieved and suffer ascertainable losses, in that, among others things, Whirlpool's course of conduct systematically:

- a. Caused Plaintiffs and the Class members to pay premium prices for a defective product;
- b. Reduced the value of the Washing Machines purchased by Plaintiffs and Class members; and
- c. Caused reasonable consumers like Plaintiffs and Class members to spend money for attempted repairs and other purported remedies of the defects in their Machines that they would not have spent but for Whirlpool's common course of conduct.

53. To this day, Whirlpool continues to conceal material information from users, consumers, and the public, that (a) the Machines are inherently defective; and (b) the Machines are not of merchantable quality.

54. All jurisdictional prerequisites have been and/or are hereby satisfied by and through the filing and service of this Complaint and the similar complaints previously filed and transferred to this Multidistrict Litigation. Moreover, in light of the thousands of complaints consumers have made directly to Whirlpool, Whirlpool's authorized dealers, and manufacturers of products that attempt to remediate the Mold Problems, and complaints posted on the internet and other forums, and Whirlpool's refusal to effectively resolve the Mold Problems, any additional pre-suit complaints or other notice to Whirlpool would have been futile.

**Plaintiff Gina Glazer's Experiences with Her Washing Machine**

55. Plaintiff Glazer bought a new Duet Sport washing machine (serial number 1-416382928) from a Best Buy store in Ohio in 2006. Plaintiff Glazer began to experience Mold Problems in her Washing Machine. Glazer complained to Whirlpool on January 9, 2008 about the "terrible smell." Whirlpool responded on January 10, 2008—advancing numerous suggestions, which did not work in any material way. On May 21, 2008, Glazer contacted Whirlpool again by email—explaining that its suggested remedies did not work. Whirlpool responded by phone—suggesting that Glazer pay for a service call, that she have the rubber gasket on the inside of the Machine door replaced, and that she clean behind the rubber gasket after each load.

**Plaintiff Chris and Trina Allison's Experiences with Their Washing Machine**

56. Plaintiffs Chris and Trina Allison purchased a Duet HT in Oct. 2005 from hhgregg in Ohio for over \$1,000 along with a 5 year extended warranty for \$84.99. After a few months of use, their towels started smelling like mold or mildew. Mrs. Allison called Whirlpool to complain in or about February 2006. Whirlpool sent a technician to



look at the washer, who said the machine was clean. The technician recommended that the Allisons run Affresh tablets through the machine every few weeks, and keep the door open when the machine is not in use. The Allisons also have noticed black mold in the rubber door seal, which they tried to clean with Clorox bleach. The Allisons have tried those solutions but the Mold Problems persist.

**Plaintiff Jeff Glennon's Experiences With His Washing Machine**

57. Plaintiff Glennon purchased a new Duet Washing Machine from PC Richard & Son in Greenvale, New York on or about August 16, 2006 and took delivery on or about August 22, 2006. He paid \$838.97. Glennon began to experience Mold Problems within weeks of delivery of his Washing Machine. Plaintiff Glennon contacted Whirlpool numerous times concerning the problem. In response, Whirlpool representatives advised him to run his Washing Machine on a hot cycle with bleach and to wipe down the door and gasket. He followed these recommendations but continued to experience Mold Problems.

58. Whirlpool sent numerous repair representatives to Glennon's home to remedy the Mold Problems. Several of the Whirlpool representatives told him that the Mold Problems he was experiencing were widespread among Whirlpool's Washing Machines. One of the Whirlpool representatives advised Glennon to run a cycle of bleach and use the clean washer cycle. Glennon followed these recommendations but continued to experience the Mold Problems.

59. After ten service calls, Glennon eventually obtained a store exchange from PC Richard & Son. On or about November 27, 2007, Glennon had PC Richard & Son pickup his first Washing Machine and deliver a replacement Washing Machine.

60. Within three months, Glennon noticed that the second machine also developed the same Mold Problems. He contacted Whirlpool again about the problem. Whirlpool advised Glennon to leave the door open, run hot cycles from time to time, and run cycles with Affresh. He followed these recommendations, but has continued to experience Mold Problems.

**Plaintiff Mara Cohen's Experiences with Her Washing Machine**

61. Plaintiff Cohen purchased a new Duet Washing Machine from Berger Appliance in Hawthorne, New York on or about February 16, 2006. She paid approximately \$959.00.

62. Shortly thereafter, a constant stench began to emanate from Plaintiff Cohen's washer. Despite Cohen's compliance with all instructions and recommendations associated with her Machine, including using HE detergent, the stench has persisted to date. Further, mold appeared on the inside of the front door, and has persisted to the present.

63. Cohen complained to Whirlpool about the Mold Problems in or about January 2007. In response, a Whirlpool repairman told Cohen, "You have to leave the door open. We know there's a problem." Cohen later received a letter from Whirlpool advising her to purchase Affresh tablets in order to address the ongoing Mold Problems. Cohen purchased and used the Affresh tablets, but they have not alleviated the Mold Problems. Plaintiff's Washing Machine currently has buildup of dark mold on the bottom of the door.

**Plaintiff Karen Hollander's Experiences with Her Washing Machine**

64. Plaintiff Hollander purchased a Duet Washing Machine from BrandsMart

U.S.A. in Deerfield Beach, Florida on or about January 11, 2006 and took delivery on January 16, 2006. She paid about \$1,100 (plus delivery charges and extended warranty).

65. Hollander began to experience Mold Problems several months after she bought the Machine despite using only HE detergent. She called Whirlpool in or about December 2007. During the call, she complained about Mold Problems, but the Whirlpool representative only offered cleaning solutions like using Affresh. Hollander tried Affresh but it was ineffective. She called Whirlpool back, but was told Whirlpool could not offer any additional solutions.

66. Hollander's independent efforts of running a diluted Clorox solution through the Machine (following the procedures suggested in the Whirlpool manual that came with the Machine), keeping the door to the Machine open, and cleaning the rubber seal, also did not relieve the Mold Problems. In researching the issue, Hollander visited a retailer and learned of other similar complaints.

67. A technician from Hollander's extended warranty company inspected her Machine twice, but he also was unable to offer any solutions to fix the Mold Problems.

**Plaintiff Jane Werman's Experiences with Her Washing Machine**

68. Plaintiff Werman purchased a new Duet Washing Machine from ABT Electronics, Inc. in Glenview, Illinois on or about February 15, 2004 and took delivery in or about August 2004. She paid about \$880.00.

69. Werman began to experience Mold Problems within a year after delivery despite using only high-efficiency detergent. She began to leave the door on the Machine open at all times. She began to run bleach cycles through her Machine. Despite this, the Mold Problems continued. Then, about a year and a half after delivery of her Machine,

Werman began experiencing Mold Problems including mold and mildew accumulation in the Washing Machine (thereby affecting items washed in the Machine).

70. Werman complained about the Mold Problems to Whirlpool retailer ABT. Werman's remediation efforts of cleaning the Machine by hand and continuing to run bleach through it were ineffective. Through Internet research she learned of similar complaints regarding Mold Problems, including that numerous other people were experiencing extensive mold and mildew growth behind the rubber seal. Similar to the complaints on the Internet, when Werman pulled back the rubber seal on her Machine, the area behind the rubber seal was caked with mold. As a result, after every few loads of laundry, Werman cleans out the mold behind the rubber seal, but the Mold Problems continue.

**Plaintiff Sonja Sandholm-Pound's Experiences with Her Washing Machine**

71. Plaintiff Sandholm-Pound bought a Washing Machine ("First Machine") on or about May 2003 in New Jersey. She bought a second Washing Machine ("Second Machine") on or about May 2005 in New Jersey. She began to experience Mold Problems affecting items washed in the Second Machine, in or around November 2005 despite use of only the recommended high-efficiency detergent. She promptly complained to Whirlpool in December 2005, and several times thereafter. Whirlpool sent a repair person twice to repair Sandholm-Pound's Second Machine. Each time, the repair person replaced the gasket around the door of the Second Machine.

72. Despite the gasket replacements, Sandholm-Pound continues to experience Mold Problems with her Second Machine. In or around April 2008, she began to experience Mold Problems in her First Machine. With respect to both of her Machines,

Sandholm-Pound followed Whirlpool's maintenance instructions—specifically to run frequent cycles of bleach and to leave the door open. Neither got rid of the Mold Problems. As a result of the Mold Problems, Sandholm-Pound's clothing, towels, and other items still smell like mildew after they are "washed" in each of the Machines. She has had to throw away numerous towels because she could not get rid of the moldy smells.

**Plaintiff Shannon Schaeffer's Experiences with Her Washing Machine**

73. Plaintiff Schaeffer purchased a new Duet Washing Machine from Cagle's Appliance Center in Ontario, California on or about February 19, 2005.

74. Schaeffer began to smell mildew emanating from the Washing Machine in 2006 despite using only high-efficiency detergent. Shortly thereafter, she discovered black mold or mildew inside and around the door seal. She attempted to clean the mold/mildew but the smell continued.

75. Schaeffer researched the Internet and discovered numerous postings from other consumers who had complained to Whirlpool about similar problems. She followed the advice Whirlpool gave to these other consumers and attempted to remedy the Mold Problems by leaving the door open on the Washing Machine after use, manually drying the door after use, using hot water, reducing the amount of HE detergent in each cycle, switching from liquid to powder HE detergent, not using liquid fabric softeners and also running empty cycles with bleach. Each of these attempted remedies failed to resolve the Mold Problems.

76. Schaeffer took further efforts in an attempt to remedy the Washing Mold Problems by removing the front panel of the machine and accessing the plastic trap cover



whereby she discovered chunks of mold and mildew. She cleaned the reservoir with bleach and reassembled the trap and cover. This attempted fix also failed to resolve the Mold Problems.

77. On or about January 6, 2009, Schaeffer contacted Whirlpool directly to seek assistance in remedying the Mold Problems. A Whirlpool representative advised her to leave the door of the Washing Machine open and also suggested use of Affresh tablets. Schaeffer requested that a free sample be sent to her from Whirlpool since they were a required accessory for the Machine. Whirlpool declined Schaeffer's request for a free-sample. Schaeffer subsequently obtained two packages of Affresh from Cagle's Appliance Center. Per the instructions on the Affresh package, she ran an empty cycle with three Affresh tablets, but the Mold Problems returned shortly thereafter.

**Plaintiff Bonnie Beierschmitt's Experiences with Her Washing Machine**

78. Plaintiff Beierschmitt bought a Duet Washing Machine in New Jersey, on or about January 4, 2005 and took delivery of the Washing Machine shortly thereafter. She paid about \$990 (plus an extended four year warranty). About one month after the delivery, Beierschmitt began to experience Mold Problems that affected items washed in the Washing Machine. She followed Whirlpool's recommendations, provided in a video tape which accompanied her Washing Machine, to leave the front door and the soap drawer open to eliminate the foul odor made. Whirlpool's own recommendations failed to correct the problem.

**Plaintiff Phil Torf's Experiences with His Washing Machine**

79. Plaintiff Torf bought a Duet Washing Machine for household purposes in Illinois on or about August 22, 2005 and took delivery on or about August 28, 2005. He

paid about \$975 (plus an extended four year warranty). Several months later, Torf began experiencing Mold Problems that affected items washed in the Machine. Torf promptly contacted Whirlpool to correct the problem. Whirlpool refused to cover the Mold Problems—stating that the problem was not covered under the warranty because, allegedly, the Machine did not contain a defective component.

**Plaintiff Sylvia Bicknell's Experiences with Her Washing Machine**

80. Plaintiff Bicknell bought a Duet Washing Machine in Florida on or about January 25, 2006 and took delivery of the Washing Machine on or about January 26, 2006. She paid about \$1,200 (plus delivery charges and extended five year warranty). Several months later Bicknell experienced Mold Problems that affected items washed in the Machine. She promptly contacted Whirlpool to correct the problem. Whirlpool refused to cover the drainage and mold and mildew problems—stating that the problem was not covered under the warranty because, allegedly, the Machine did not contain a defective component.

**Plaintiff Rebecca Nordan's Experiences With Her Washing Machine**

81. Plaintiff Nordan purchased a Duet Washing Machine from ABC Appliance Sales & Services, Inc. in Edgewater, Maryland on or about April 22, 2005 for approximately \$989.95 and began to experience Mold Problems that affected items washed in the Machine four months after the delivery of her Washing Machine.

82. Although Plaintiff Nordan raised the Mold Problems with a Whirlpool representative in late 2005 through a telephone service call, the Whirlpool representative only offered cleaning solutions such as bleach and water mixture to run through the machine. Plaintiff Nordan's independent efforts of running a dishwasher detergent

through the Machine, keeping the door to the Machine open and cleaning the rubber seal, glass door and detergent compartment tray of the Machine with a cloth and bleach solution, also did not relieve the Mold Problems. In researching the issue, Plaintiff Nordan learned of other similar complaints.

83. Plaintiff Nordan called Whirlpool again in 2007 and in March 2008, and the representative offered the use of Affresh™ tablets. Plaintiff Nordan asked if the instruction to use Affresh™ tablets was in the manual that accompanied Plaintiff's Machine. Whirlpool responded by saying that this technique was not in the manual and that the Affresh™ tablets were invented after the problem started occurring. Plaintiff Nordan tried the Affresh™ tablets but ultimately this proved to be ineffective as well.

84. Plaintiff Nordan purchased an extended warranty plan for her Machine for two years. Whirlpool, however, refused to come to Plaintiff Nordan's home to service her Machine's Mold Problems under the extended warranty, although it offered to replace the gasket, at Plaintiff Nordan's expense. As a result of Whirlpool's response, Plaintiff Nordan did not renew her two year extended warranty plan with Whirlpool.

**Plaintiff Maggie O'Brien's Experience With Her Washing Machine**

85. Plaintiff O'Brien purchased a Duet Washing Machine on or about February 11, 2005 and received delivery of that Machine shortly thereafter from Rouch's TV & Appliance, Inc. in Valparaiso, Indiana for approximately \$999.00. Plaintiff O'Brien began to experience Mold Problems that affected items washed in the Machine soon after the purchase of her Washing Machine.

86. As a result of Plaintiff O'Brien's complaints to Whirlpool, on or about January 13, 2006, a Whirlpool repairman came to Plaintiff O'Brien's home to look at the

Machine. Due to the Mold Problems, the repairman replaced the rubber seal on the front of the Machine. The repairman also advised Plaintiff O'Brien to leave the door open on the Machine and to clean the Machine with soap. Neither the replacement of the rubber seal, nor the cleaning instructions were effective, as the Mold Problems continued.

87. On or about February 22, 2006, Plaintiff O'Brien again complained to Whirlpool concerning the mold growth in her Washing Machine. Plaintiff O'Brien informed Whirlpool that she had been running bleach through the Machine and leaving the door open. Whirlpool responded by sending Plaintiff a set of cleaning instructions on how to prevent molding. At this time, Whirlpool recommended, "Select the 'heavy duty' cycle and 'hot' water. Start empty washer and at 7 to 8 minutes into the cycle, fill the detergent dispenser with BLEACH. At the end of the cycle, open the door, gently roll the rubber gasket toward you and wipe the underside of the rubber gasket, the area directly under the gasket ("well" area), and the top of the gasket with bleach (1 cup bleach to a gallon hot water)." Plaintiff followed the instructions given to her by Whirlpool; however the mold continued to grow inside Plaintiff's Machine.

88. Plaintiff O'Brien raised the Mold Problems issue again with a Whirlpool representative on September 17, 2007. The Whirlpool representative only offered cleaning solutions that ultimately proved to be ineffective, such as using hot water with bleach, removing the clothes very soon after the cycle, leaving the door open to ensure that the unit does not dry out, periodically wiping the rubber seal and "well" area with bleach solution, and using Affresh™. Plaintiff O'Brien's efforts of running bleach through the Machine, using High Efficiency detergent and wiping the inside of the Machine with a cloth coated in bleach did not relieve the Mold Problems.

**Plaintiff Andrea Strong's Experiences With Her Washing Machine**

89. Plaintiff Strong purchased a Duet Washing Machine from Spencer's TV & Appliances in Mesa, Arizona on or about November 19, 2004 and took delivery of the Washing Machine in or about December 11, 2004. Plaintiff Strong began to experience Mold Problems.

90. Plaintiff Strong contacted Whirlpool in November 2007 concerning the Mold Problems. In response, the Whirlpool representative advised Plaintiff Strong to wipe and dry the boot on her Washing Machine, and to run empty cycles with Affresh. Plaintiff Strong tried with these recommendations, but has continued to experience the Mold Problems. The Whirlpool representative told Plaintiff Strong that the Mold Problems were caused by the failure of the Washing Machine to fully drain water after washing cycles. She contacted Whirlpool again in January 2008 about her continuing Mold Problems, but Whirlpool told her she was out of warranty.

**Plaintiff Pramila Gardner's Experiences With Her Washing Machine**

91. Plaintiff Gardner purchased a Duet Washing Machine from Best Buy Co. Inc. in Pearland, Texas on or about December 27, 2004 and took delivery of the Washing Machine on December 28, 2004. She paid approximately \$999.99 (plus delivery charges and pedestal). Plaintiff Gardner began to experience Mold Problems that affected items washed in the Machine in May of 2006.

92. Plaintiff Gardner promptly called Whirlpool to complain. While waiting on hold for about 20 minutes, she reviewed information about Mold Problems on Whirlpool's website ([www.whirlpool.com](http://www.whirlpool.com)). She followed the instructions on Whirlpool's website, but they did not fix the Mold Problems. Plaintiff Gardner tried



keeping the door to the Machine open, only washing clothing with hot or warm water, running bleach through the Machine, and cleaning the inside of the Machine with Tilex® (a product advertised as a mold and mildew remover). Nonetheless, the Mold Problems persist, her Washing Machine smells like mildew, and her clothing smells like mildew after it is “washed” in the Machine.

**Plaintiff Tracie Snyder's Experiences With Her Washing Machine**

93. Plaintiff Snyder purchased a Duet Washing Machine from Plaza Brand Source in Concord, North Carolina on or about June 4, 2005 and took delivery of the Washing Machine on June 6, 2005. Plaintiff paid approximately \$1,200.00. She also purchased a 5 year extended warranty.

94. Within a year, Plaintiff Snyder began to experience Mold Problems. She complained to her retailer, who advised her to leave the door open. That did not resolve her Mold Problems, so later in 2006, she contacted her extended warranty company, which suggested she keep the door open, run bleach through the Machine, and run the sanitary cycle. Those remedial measures did not work either.

95. In June 2008, Plaintiff Snyder complained about Mold Problems to Whirlpool, whose representative told her that because she had an extended warranty, Whirlpool would not help her.

96. Plaintiff Snyder tried various measures to fix the Mold Problems, including running a diluted bleach solution through the Machine, running “Odoban®” through the Machine with her laundry, cleaning the rubber seal of the Machine with a cloth, and cleaning behind the rubber seal by moving the seal away from the drum. These efforts did not relieve the Mold Problems. In researching the issue, Plaintiff

Snyder visited a Sears store and learned of other similar complaints with the Washing Machines.

**CLASS ACTION ALLEGATIONS**

97. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated, under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3).

98. The Classes that Plaintiffs seek to represent is defined as follows:

**Ohio:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Ohio.

**California:** All persons who purchased a Washing Machine in the State of California and who purchased the Machine for primarily personal, family or household purposes as defined by California Civil Code § 1791(a).

**Florida:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Florida.

**Illinois:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Illinois.

**New Jersey:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in New Jersey.

**New York:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in New York.

**Arizona:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Arizona.

**Indiana:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Indiana.

**Maryland:** All persons who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Maryland.

**North Carolina:** All persons who purchased a Washing Machine for primarily personal, family or household purposed, and not for resale, in North Carolina.

**Texas:** All persons who purchased a Washing Machine for primarily personal, family or household purposed, and not for resale, in Texas.

Excluded from the Classes are Whirlpool, its affiliates, employees, officers and directors, persons or entities that distribute or sell the Washing Machines, the Judge(s) assigned to this case, and the attorneys of record in this case. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveal that any of the Classes should be expanded or otherwise modified.

99. **Numerosity/Impracticability of Joinder:** The members of the Classes are so numerous that joinder of all members would be impracticable. The proposed Classes each include thousands of members. The precise numbers of members can be ascertained through discovery, which will include Whirlpool's sales, warranty service, and other records.

100. **Commonality and Predominance:** There are common questions of law and fact that predominate over any questions affecting only individual members of each Class. These common legal and factual questions, include, but are not limited to the following:

- (a) Whether the Washing Machines are materially defective—and what are the defects;
- (b) Whether Whirlpool knew that the Washing Machines were and are materially defective;
- (c) Whether Whirlpool omitted and concealed material facts from its communications and disclosures to Plaintiffs and the Classes regarding the defects inherent in the Washing Machines;

- (d) Whether Whirlpool has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the sale of the Machines;
- (e) Whether Whirlpool violated the consumer protection statutes applicable to each class;
- (f) Whether Whirlpool breached its warranty and/or extended warranties;
- (g) Whether Whirlpool breached its implied warranties;
- (h) Whether Whirlpool has been unjustly enriched;
- (i) Whether, as a result of Whirlpool's conduct, Plaintiffs and the Classes have suffered damages; and if so, the appropriate amount thereof; and
- (j) Whether, as a result of Whirlpool's misconduct, Plaintiffs and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

101. **Typicality**: The representative Plaintiffs' claims are typical of the claims of the members of the Classes. Plaintiffs and all Class members have been injured by the same wrongful practices of Whirlpool. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

102. **Adequacy**: Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Classes, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests contrary to or conflicting with the Classes.

103. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the

claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Classes are likely in the millions of dollars, the individual damages incurred by each Class member are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Further, individual members of the Classes do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also result in varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and the court system because of multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Whirlpool has acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

104. Plaintiffs do not anticipate any difficulty in the management of this litigation.

105. Whirlpool has, or has access to, address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.



**FIRST CAUSE OF ACTION**  
**Asserted On Behalf Of The Ohio Class**  
**(Violation Of The Ohio Consumer Sales Practices Act ("CSPA"))**

106. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

107. Plaintiffs Glazer and Chris and Trina Allison (collectively "Ohio Plaintiffs") assert this cause of action on behalf of themselves and the other members of the Ohio Class.

108. The CSPA is codified at OHIO REV. CODE ANN. § 1345.01, *et seq.* The statute is broad, applying to the sale of consumer goods "to an individual for purposes that are primarily personal, family, or household [uses]." OHIO REV. CODE ANN. § 1345.01(A). Accordingly, the conduct at issue in this case falls within the scope of the CSPA.

109. The CSPA prohibits unfair, deceptive, and unconscionable practices in consumer sales transactions. OHIO REV. CODE ANN. § 1345.02(A). The CSPA further provides that "a consumer" has a private cause of action for violations of the statute, and expressly allows for class actions. OHIO REV. CODE ANN. § 1345.09.

110. Whirlpool has engaged in unfair, deceptive, and unconscionable practices by: (1) marketing and selling Washing Machines with defects that cause lack of dependable operation and thorough cleaning of things with normal use and/or created a substantial risk that such problems would occur with normal use; and (2) intentionally failing to disclose and/or concealing these known defects and risks.

111. Whirlpool acted in the face of prior notice that its conduct was deceptive, unfair, or unconscionable. Indeed, it is well established in CSPA jurisprudence that

material omissions and misrepresentations concerning a product constitutes a violation of the statute. It is also considered a deceptive act or practice for purposes of the CSPA if a supplier makes representations, claims, or assertions of fact in the absence of a reasonable basis in fact. *See* OHIO ADMIN. CODE, § 109:4-3-10(A).

112. As a direct and proximate result of Whirlpool's violations of the CSPA, the Ohio Plaintiffs and other members of the Ohio Class have been injured.

**SECOND CAUSE OF ACTION**  
**Asserted On Behalf Of The Ohio Class**  
**(Tortious Breach of Warranty)**

113. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

114. The Ohio Plaintiffs assert this cause of action on behalf of themselves and the other members of the Ohio Class.

115. Whirlpool impliedly warranted that its Washing Machines were of good and merchantable quality—fit and safe for their ordinary intended use.

116. There were Design Defects in the Washing Machines manufactured, distributed, and/or sold by Whirlpool to middlemen who then resold the Machines to the Ohio Plaintiffs and the other members of the Ohio Class; those Design Defects existed at the time the Machines were sold to the Ohio Plaintiffs and the other members of the Ohio Class; and those Design Defects were the direct and proximate cause of injury to the Ohio Plaintiffs and the other members of the Ohio Class.

117. The Design Defects—which cause noxious odors to permeate the home, disturb the repose of its inhabitants, and produce a smelly wash—render Whirlpool's Washing Machines unfit for their intended purpose (that of producing a clean and clean-

smelling wash), and not of merchantable quality.

118. As a direct and proximate result of Whirlpool's warranty breach, the Ohio Plaintiffs and the other members of the Ohio Class were caused to suffer loss attributable to the decreased value of the product itself, and consequential damages—losses sustained by the purchase of the defective product—and the Ohio Plaintiffs and the other members of the Ohio Class will have to spend monies to repair and/or replace the washers.

**THIRD CAUSE OF ACTION**  
**Asserted on Behalf of the Ohio Class**  
**(Negligent Design and Failure to Warn)**

119. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

120. The Ohio Plaintiffs assert this cause of action on behalf of themselves and the other members of the Ohio Class.

121. Whirlpool knew—or by the exercise of reasonable care should have known—that its Washing Machines would have and had the alleged design defect.

122. Whirlpool knew that the Ohio Plaintiffs and the other members of the Ohio Class—who used Whirlpool's Washing Machines for their intended use—were members of a foreseeable class of persons who were and are at risk of suffering serious inconvenience and expense solely because of the defect.

123. Whirlpool's suggestion to leave the washer door open (which does not solve the problem anyway), if tried, is a danger to children.

124. At the time Whirlpool manufactured, distributed, and/or sold the Washing Machines, it owed a non-delegable duty to persons like the Ohio Plaintiffs and the other members of the Ohio Class to exercise ordinary and reasonable care to properly design

the Machines, and it owes a continuing duty to warn about the problem and to repair and/or recall its defective Machines.

125. Whirlpool had a pre-sale duty to warn potential purchasers that the Washing Machines carried with them greater risks of foul orders and health hazards than an ordinary consumer would expect when using the Machines in their intended or reasonably-foreseeable manner.

126. Any benefits by way of lower energy or water use are outweighed by the risks inherent in the Washing Machines' design.

127. Whirlpool failed to use appropriate design, engineering, and parts in manufacture—and Whirlpool in other respects breached its duties by being wantonly reckless, careless, and negligent.

128. As a direct and proximate result of Whirlpool's wanton recklessness, carelessness, and negligence, the Ohio Plaintiffs and the other members of the Ohio Class were caused to suffer damages and losses—and the Ohio Plaintiffs and the other members of the Ohio Class will have to spend money to repair and/or replace the defective Washing Machines.

129. The Ohio Plaintiffs and the other members of the Ohio Class have not committed any contributory negligence.

**FOURTH CAUSE OF ACTION**  
**Asserted on Behalf of the Ohio Class**  
**(Unjust Enrichment)**

130. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

131. The Ohio Plaintiffs assert this cause of action on behalf of themselves and

the other members of the Ohio Class.

132. This claim is asserted in the alternative on behalf of the members of the Ohio Class, to the extent that the warranties do not govern all of the Ohio Plaintiffs' and Class members' claims or there is any determination that the Ohio Plaintiffs or the other members of the Ohio Class do not have standing to assert any contractual claims asserted against Whirlpool because of any alleged absence of contractual privity or otherwise.

133. Whirlpool has been unjustly enriched by the purchases of the Washing Machines by the Ohio Plaintiffs and the other members of the Ohio Class.

134. The Ohio Plaintiffs and the other members of the Ohio Class unknowingly conferred a benefit on Whirlpool of which Whirlpool had knowledge, since Whirlpool was aware of the defective nature of the Washing Machines and the problems that plagued them, but failed to disclose this knowledge and misled the Ohio Plaintiffs and the other members of the Ohio Class regarding the nature and quality of the Washing Machines while profiting from this deception.

135. The circumstances are such that it would be inequitable, unconscionable, and unjust to permit Whirlpool to retain the benefit of profits that it unfairly has obtained from the Ohio Plaintiffs and the other members of the Ohio Class.

136. The Ohio Plaintiffs and the other members of the Ohio Class, having been damaged by Whirlpool's conduct, are entitled to recover or recoup damages as a result of the unjust enrichment of Whirlpool to their detriment.



**FIFTH CAUSE OF ACTION**  
**Asserted on Behalf of All Classes**  
**(Violations of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) -**  
**Written Warranty)**

137. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

138. Whirlpool's Washing Machines are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

139. Plaintiffs and Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

140. Whirlpool is a "warrantor" and "supplier" as those terms are defined by 15 U.S.C. § 2301(4) and (5).

141. Whirlpool provided Plaintiffs and Class members with "written warranties" as that term is defined by 15 U.S.C. § 2301(6).

142. In its capacity as a warrantor, and by the conduct described herein, any attempt by Whirlpool to limit the express warranties in a manner that would exclude coverage of the defective Washing Machines is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective Washing Machines is null and void.

143. All jurisdictional prerequisites, including pre-suit notice, have been satisfied herein.

144. By Whirlpool's conduct as described herein, including Whirlpool's knowledge of the defective Washing Machines and its action, and inaction, in the face of that knowledge, Whirlpool has failed to comply with its obligations under its written and

promises, warranties, and representations.

145. As a result of Whirlpool's breach of express warranties, Plaintiffs and Classes members are entitled to revoke their acceptance of the Washing Machines, obtain damages and equitable relief, and obtain attorneys' fees and costs under 15 U.S.C. § 2310.

**SIXTH CAUSE OF ACTION**  
**Asserted on Behalf of All Classes**  
**(Violations of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) -**  
**Implied Warranty)**

146. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

147. Whirlpool's Washing Machines are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

148. Plaintiffs and Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

149. Whirlpool is a "warrantor" and "supplier" as those terms are defined by 15 U.S.C. § 2301(4) and (5).

150. Whirlpool provided Plaintiffs and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7).

151. In its capacity as a warrantor, and by the conduct described herein, any attempt by Whirlpool to limit the implied warranties in a manner that would exclude coverage of the defective Washing Machines is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective Washing Machines is void.

152. All jurisdictional prerequisites, including pre-suit notice, have been

satisfied herein.

153. Plaintiffs and members of the Classes are in privity with Whirlpool in that they purchased their Washing Machines directly from Whirlpool, or from an actual or apparent agent of Whirlpool such as Whirlpool's authorized dealers.

154. Plaintiffs and the members of the Classes are also in privity with Whirlpool by virtue of the contractual relationship stemming from Whirlpool's manufacturer's warranty provided in conjunction with the purchase of the Washing Machines, which is enforceable by Plaintiffs and the Classes as against Whirlpool regardless of where, or from whom, the Washing Machines were acquired.

155. By Whirlpool's conduct as described herein, including Whirlpool's knowledge of the defective Washing Machines and its action, and inaction, in the face of that knowledge, Whirlpool has failed to comply with its obligations under its written and implied promises, warranties, and representations.

156. As a result of Whirlpool's breach of implied warranties, Plaintiffs and members of the Classes are entitled to revoke their acceptance of the Washing Machines, obtain damages and equitable relief, and obtain attorneys' fees and costs under 15 U.S.C. § 2310.

**SEVENTH CAUSE OF ACTION  
Asserted On Behalf Of All Classes  
(Breach Of Express Warranty)**

157. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

158. This cause of action is brought on behalf of all Classes.

159. Whirlpool made affirmations of fact and promises to Plaintiffs and

members of the Classes which related to the Washing Machines as more fully described herein.

160. Whirlpool's affirmations of fact and promises became part of the basis of the bargain between the parties.

161. These affirmations of fact and promises created an express warranty that the Washing Machines would conform to Whirlpool's affirmations and promises.

162. Whirlpool uniformly warranted all of the Washing Machines against defects in material or workmanship at a time when it knew that the Washing Machines suffered from serious defects and, nevertheless, continued to market and sell the Washing Machines with this express warranty.

163. Whirlpool is obligated under the terms of its written warranty to repair and/or replace the defective Washing Machines sold to Plaintiffs and members of the Classes.

164. Whirlpool has breached its written warranty, as set forth above, by supplying the Washing Machines in a condition which does not meet the warranty obligations undertaken by Whirlpool, and by failing to repair or replace the defects and/or defective parts.

165. As set forth above, Whirlpool's warranty fails in its essential purpose and, accordingly, Plaintiffs and members of the Classes cannot and should not be limited to the remedies set forth in Whirlpool's written warranty and, instead, should be permitted to recover all measure of appropriate relief.

166. Whirlpool has received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and Whirlpool's knowledge of the defects in

the Washing Machines, Whirlpool has failed and refused to honor its warranty, even though it knows of the defects inherent in the Washing Machines.

167. Plaintiffs and members of the Classes have given Whirlpool a reasonable opportunity to cure its failures with respect to its warranty, and Whirlpool has failed to do so.

168. Whirlpool has failed to provide Plaintiffs and members of the Classes, as a warranty repair and/or replacement, a product that conforms to the qualities and characteristics that Whirlpool expressly warranted when it sold the Washing Machines to Plaintiffs and members of the Classes.

169. As a result of Whirlpool's breach of warranty, Plaintiffs and members of the Classes have suffered damages in an amount to be determined at trial.

**EIGHTH CAUSE OF ACTION**  
**Asserted On Behalf All Classes**  
**(Breach of Implied Warranty of Merchantability)**

170. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully stated herein.

171. This cause of action is brought on behalf of Plaintiffs and the members of all Classes.

172. Whirlpool is a merchant in the sale of the Washing Machines to Plaintiffs and the members of the Classes and the Washing Machines are goods under applicable law.

173. Plaintiffs and members of the Classes are in privity with Whirlpool in that they purchased their Washing Machines directly from Whirlpool, or from an actual or apparent agent of Whirlpool such as Whirlpool's authorized dealers.



174. Plaintiffs and the members of the Classes are also in privity with Whirlpool by virtue of the contractual relationship stemming from Whirlpool's manufacturer's warranty provided in conjunction with the purchase of the Washing Machines, and which is enforceable by Plaintiffs and the Classes as against Whirlpool regardless of where, or from whom, the Washing Machines were acquired.

175. At all times relevant hereto, there was a duty imposed by law which requires that Whirlpool's Washing Machines be reasonably fit for the purposes for which washing machines are used, that they are of fair average quality within their description, and that they be acceptable in trade for their description.

176. Whirlpool has not validly disclaimed, excluded, or modified the implied warranties and/or duties described herein, and/or any attempted disclaimer or exclusion of the same was and is ineffectual.

177. Notwithstanding the aforementioned duty, at the time of delivery, the Washing Machines sold to Plaintiffs and the Classes were not merchantable, and not fit for the ordinary purposes for which they were sold. The Washing Machines are not fit for the ordinary purpose of cleaning clothing and other articles, because, *inter alia*, the Washing Machines are defective in that they contain Design Defects that result in Mold Problems.

178. As documented in its own business records and elsewhere, Whirlpool was notified that the Washing Machines were not merchantable within a reasonable amount of time after the latent defects manifested itself to Plaintiffs and the Classes.

179. As a direct result of the non-merchantability of the Washing Machines described herein, Plaintiffs and other members of the Classes have sustained damages in

an amount to be determined at trial.

**NINTH CAUSE OF ACTION**  
**Asserted On Behalf Of All Classes**  
**(Unjust Enrichment)**

180. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

181. This claim is asserted in the alternative on behalf of Plaintiffs and the members of the Classes, to the extent that the warranties do not govern all of Plaintiffs' and Class members' claims or there is any determination that Plaintiffs do not have standing to assert any contractual claims asserted against Whirlpool on because of any alleged absence of contractual privity or otherwise.

182. Plaintiffs and the members of the Classes conferred a benefit on Whirlpool, of which benefit Whirlpool had knowledge. By its wrongful acts and omissions described herein, including selling the Washing Machines, Whirlpool was unjustly enriched at the expense of Plaintiffs and the members of the Classes.

183. Plaintiffs' detriment and Whirlpool's enrichment were related to and flowed from the wrongful conduct challenged in this Complaint.

184. It would be inequitable for Whirlpool to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the Washing Machines.

185. Plaintiffs and the members of the Classes seek restitution from Whirlpool and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by Whirlpool from its wrongful conduct and establishment of a constructive trust from which Plaintiffs and Class members may seek restitution.

**TENTH CAUSE OF ACTION**  
**Asserted On Behalf Of The California Class**  
**The Song-Beverly Act - Breach Of Express Warranty**  
**(Violations Of Civil Code § 1790 et seq.)**

186. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

187. Plaintiff Schaeffer asserts this cause of action on behalf of herself and the other members of the California Class.

188. Whirlpool warranted all of the Washing Machines against defects in material or workmanship at a time when it knew that these Machines suffered from serious defects and, nevertheless, continued to market, distribute, and sell these Machines with these express warranties.

189. Whirlpool also sold extended warranties to some members of the California Class even though it had no intention of remedying the serious defects in material and workmanship inherent in the Machines and has continued to market, distribute, and sell extended warranties with respect to the Machines despite the serious defects in the Washing Machines.

190. Whirlpool further warranted the stainless steel drums for their lifetime.

191. As an express warrantor and manufacturer, Whirlpool had certain obligations under the Song-Beverly Act, and, in particular, Civil Code §1793.2(b) and (d), to conform the Washing Machines to its express warranties.

192. Whirlpool is obligated under the terms of its express warranties to repair and/or replace the defective Machines sold to Plaintiff Schaeffer and the other members of the California Class.

193. Whirlpool has breached its express warranties, as set forth above, including its extended warranties, by selling Washing Machines in a condition that does not meet the warranty obligations undertaken by Whirlpool, and by failing to repair the defects and/or replace the defective parts in the Machines.

194. Plaintiff Schaeffer and the other members of the California Class have used the Washing Machines for their intended and ordinary purpose of cleaning things.

195. Plaintiff Schaeffer and the other members of the California Class have performed each and every duty required under the terms of the express warranties, except as may have been excused or prevented by the conduct of Whirlpool or by operation of law in light of Whirlpool's unconscionable conduct.

196. Whirlpool has received sufficient and timely notice of the breaches of express warranty alleged herein. Despite this notice and Whirlpool's knowledge, Whirlpool refuses to honor its express warranties, even though it knows of the inherent defects in the Washing Machines.

197. In addition, Whirlpool has received thousands of complaints and other notices from its customers nationwide advising it of the defects in the Washing Machines.

198. Plaintiff Schaeffer and the other members of the California Class have given Whirlpool a reasonable opportunity to cure its failures with respect to its express warranties, and Whirlpool failed to do so.

199. In its capacity as a warrantor, and by the conduct described herein, any attempt by Whirlpool to limit the express warranties in a manner that would exclude coverage of the defective Washing Machines is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective Washing Machines is null and

void.

200. Whirlpool has failed to provide to Plaintiff Schaeffer or the other members of the California Class, as a warranty replacement, a product that conforms to the qualities and characteristics that Whirlpool expressly warranted when Plaintiff Schaeffer and the other members of the California Class purchased their Washing Machines.

201. Whirlpool has not conformed the Washing Machines to the express warranty. Whirlpool is, therefore, required to either pay damages or reimburse the buyer the purchase price and incidental damages under Civil Code §§ 1793.2(d) and 1794.

202. Whirlpool knew of its obligations under its express warranties to pay for a new Machine, as needed, caused by the defects described herein. However, Whirlpool has willfully refused to pay for a new Machine as required under its express warranties. Whirlpool is, therefore, liable for not only damages, but also a civil penalty under Civil Code § 1794.

**ELEVENTH CAUSE OF ACTION**  
**Asserted On Behalf Of The California Class**  
**The Song-Beverly Act - Breach Of Implied Warranty**  
**(Violations Of Civil Code § 1790 et seq.)**

203. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

204. Plaintiff Schaeffer asserts this cause of action on behalf of herself and the other members of the California Class.

205. Whirlpool was a merchant in the sale of the Washing Machines to Plaintiff Schaeffer and the other members of the California Class. Whirlpool designs, manufactures, markets, advertises, distributes and sells the Washing Machines.



206. By operation of law, Whirlpool provided Plaintiff Schaeffer and the other members of the California Class with an implied warranty of merchantability in the sale and lease of the Washing Machines.

207. Whirlpool breached its implied warranty by selling Washing Machines that were not fit for the ordinary purposes of dependable operation and effective cleaning of things, and by failing to repair the defects and/or replace the defective parts in the Machines.

208. Whirlpool knew or had reason to know that Plaintiff Schaeffer and the other members of the California Class purchased the Washing Machines to effectively and dependably wash their things.

209. The Washing Machines do not conform to the promises and affirmations uniformly issued by Whirlpool in its sales materials and warranties.

210. Plaintiff Schaeffer and the other members of the California Class have used the Washing Machines for their intended and ordinary purpose of cleaning things.

211. Plaintiff Schaeffer and the other members of the California Class have performed each and every duty required by law, except as may have been excused or prevented by the conduct of Whirlpool or by operation of law in light of Whirlpool's unconscionable conduct.

212. Plaintiff Schaeffer and the other members of the California Class have provided sufficient and timely notice to Whirlpool regarding the problems they experienced with the Washing Machines and, notwithstanding such notice, Whirlpool has failed and refused to offer Plaintiff Schaeffer and the other members of the California Class an effective remedy.

213. In addition, Whirlpool has received thousands of complaints and other notices from consumers advising them of the defects associated with the Washing Machines.

214. Plaintiff Schaeffer and the other members of the California Class have given Whirlpool a reasonable opportunity to cure its failures with respect to its implied warranty, and Whirlpool failed to do so.

215. By failing to repair the Washing Machines and by failing to replace the Washing Machines as needed, Whirlpool has breached the implied warranty of merchantability.

216. In its capacity as a warrantor, and by the conduct described herein, any attempt by Whirlpool to limit the implied warranty in a manner that would exclude coverage of the defective Washing Machines is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective Washing Machines is null and void.

217. Plaintiff Schaeffer and the other members of the California Class have been damaged as a result of Whirlpool's breach of the implied warranty of merchantability.

218. Plaintiff Schaeffer and the other members of the California Class are entitled to the remedies provided by California Civil Code § 1794.

**TWELFTH CAUSE OF ACTION**  
**Asserted on Behalf of the Florida Class**  
**(Violation of Florida's Deceptive and Unfair Trade Practices Act,**  
**F.S.A., 501.201 et seq. ("FDUTPA"))**

219. Plaintiffs incorporate by reference the allegations contained in all

preceding paragraphs of this Complaint as though set forth fully herein.

220. At all relevant times, Plaintiffs Hollander and Bicknell and all members of the Florida Class were consumers within the meaning of FDUTPA.

221. At all relevant times hereto, Whirlpool engaged in trade and/or commerce within the meaning of FDUTPA.

222. The practices of Whirlpool violate FDUTPA for, among other things, one or more of the following reasons:

- a. Whirlpool omitted and concealed material facts from its communications and disclosures to Plaintiffs Hollander and Bicknell and all members of the Florida Class regarding the defect inherent in the Washing Machines;
- b. Whirlpool made false and/or misleading statements of material fact regarding the Washing Machines, which statements were likely to deceive the public; and
- c. Whirlpool knew, or was reckless in not knowing, that its statements about the Washing Machines were false and/or misleading.

223. By the conduct described herein, Whirlpool has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce.

224. The representations and omissions by Whirlpool were likely to deceive reasonable consumers and a reasonable consumer would have relied on these representations and omissions.

225. Had Whirlpool disclosed all material information regarding the Washing Machines to Plaintiffs Hollander and Bicknell and all of the Florida Class members, they would not have purchased the Washing Machines.

226. The foregoing acts and practices proximately caused Plaintiffs Hollander and Bicknell and other members of the Florida Class to suffer actual damages in the form of, among other things, monies spent to repair the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, attorneys' fees, and costs of suit.

**THIRTEENTH CAUSE OF ACTION**  
**Asserted on Behalf of the Illinois Class**  
**(Violation of Illinois Consumer Fraud and Deceptive Business Practices Act,**  
**815 ILCS 505/1 et seq. ("CFDBPA"))**

227. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

228. At all relevant times, Plaintiffs Werman and Torf and all members of the Illinois Class were consumers within the meaning of CFDBPA.

229. At all relevant times hereto, Whirlpool engaged in trade and/or commerce within the meaning of CFDBPA.

230. Despite knowing that the Washing Machines are manufactured and sold with Design Defects which cause Mold Problems, when it marketed and sold the Machines, Whirlpool uniformly represented to customers and the general public that the Machines are free from defects and will perform in the manner and for the purpose that they are intended.

231. Under all circumstances, Whirlpool's representations and/or omissions regarding the defect in the Washing Machines were misleading and deceptive, and Whirlpool intentionally made these misleading and deceptive representations and/or omissions (while knowing they were deceptive and misleading) for the purpose of

deceiving Plaintiffs Werman and Torf and other Illinois Class members. Whirlpool intended that Plaintiffs Werman and Torf rely on Whirlpool's deceptive and misleading practice.

232. Whirlpool's conduct was unfair and deceptive and constituted an improper concealment, suppression, or omission of material facts—in violation of the CFDPA's prohibition against unfair business practices.

233. Whirlpool violated the CFDPA's prohibition against misrepresenting and omitting material information during commercial transactions, as well as the CFDPA's prohibition against unfair business practices.

234. Whirlpool's misconduct, including the misrepresentations and/or concealment of the defective condition of the Machines, as described in this Complaint, took place in the course of trade or commerce in Illinois, and arose out of transactions that occurred at one or more of its retail outlets in Illinois.

235. As a direct and proximate result of Whirlpool's violations of the CFDPA, Plaintiffs Werman and Torf and other Class members suffered damages, in the form of, among other things, monies spent to repair the Washing Machines and/or diminution in value of the Washing Machines.

**FOURTEENTH CAUSE OF ACTION**  
**Asserted on Behalf of the New York Class**  
**(Violations of Section 349 of New York General**  
**Business Law: Deceptive Acts And Practices)**

236. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

237. Plaintiffs Glennon and Cohen and the other members of the New York



Class are consumers in New York who purchased the defective Washing Machines and bring this action under NY GBL §349.

238. Whirlpool has engaged in deceptive practices in the sale of the defective Washing Machines including: (1) selling the Machines with Design Defects that cause Mold Problems to occur with normal use and/or created a substantial risk of Mold Problems; and (2) failing to disclose and/or concealing this known defect and risk.

239. The unfair and deceptive trade acts and practices of Whirlpool have directly, foreseeably, and proximately caused damages and injury to Plaintiffs Glennon and Cohen and the other members of the New York Class.

**FIFTEENTH CAUSE OF ACTION**  
**Asserted On Behalf Of The New Jersey Class**  
**(Violations Of New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. § 56:8-1 et seq.)**

240. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

241. Plaintiffs Sandholm-Pound and Beierschmitt assert this cause of action on behalf of themselves and the other members of the New Jersey Class.

242. Plaintiffs Sandholm-Pound and Beierschmitt, the other members of the New Jersey Class, and Whirlpool are "persons" within the meaning of the CFA.

243. Plaintiffs Sandholm-Pound and Beierschmitt and the other members of the New Jersey Class are "consumers" within the meaning of the CFA.

244. At all relevant times material hereto, Whirlpool conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

245. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory

schemes.

246. Whirlpool has engaged in deceptive practices related to the sale of the defective Washing Machines, including: (1) marketing and selling Washing Machines with Design Defects that cause Mold Problems with normal use and/or created a substantial risk that Mold Problems would occur with normal use; and (2) intentionally failing to disclose and/or concealing these known defects and risks.

247. Whirlpool consciously failed to disclose material facts to Plaintiffs Sandholm-Pound and Beierschmitt and the other members of the New Jersey Class with respect to the alleged defects.

248. Whirlpool's unconscionable conduct described herein included the omission and concealment of material facts concerning the Washing Machines.

249. Whirlpool intended that Plaintiffs Sandholm-Pound and Beierschmitt and the other members of the New Jersey Class rely on the acts of concealment and omissions, so that Plaintiffs Sandholm-Pound and Beierschmitt and the other members of the New Jersey Class would purchase the Washing Machines.

250. Had Whirlpool disclosed all material information regarding the Washing Machines to Plaintiffs Sandholm-Pound and Beierschmitt and the other members of the New Jersey Class, they would not have purchased the Machines.

251. The foregoing acts, misrepresentations, omissions, and unconscionable commercial practices caused Plaintiffs Sandholm-Pound and Beierschmitt and the other members of the New Jersey Class to suffer an ascertainable loss in the form of, among other things, monies spent to repair, purchase cleaning products or replace the Washing Machines and loss in value of the Washing Machines, and they are entitled to recover

such damages, together with appropriate penalties, including treble damages, attorney's fees, and costs of suit.

**SIXTEENTH CAUSE OF ACTION**  
**Asserted On Behalf Of The California Class**  
**(Unfair Competition Law (Bus. & Prof. Code §17200, *et seq.*)**

252. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

253. Plaintiff Schaeffer asserts this cause of action on behalf of herself and the other members of the California Class.

254. Whirlpool has engaged in unfair, unlawful, and fraudulent business practices by: (1) marketing and selling Washing Machines with Design Defects that cause Mold with normal use and/or created a substantial risk that Mold Problems would occur with normal use; and (2) intentionally failing to disclose and/or concealing these known defects and risks.

255. By engaging in the above-described acts and practices, Whirlpool has committed one or more acts of unfair competition within the meaning of Business and Professions Code §17200, *et seq.*

256. Whirlpool's acts and practices have deceived and/or are likely to deceive members of the consuming public and the members of the California Class.

257. Whirlpool knowingly sold Plaintiff Schaeffer and the other members of the California Class and other consumers Washing Machines with defects that have rendered the Machines essentially unusable for the purposes for which they were sold.

258. The injury to consumers by this conduct is greatly outweighed by any alleged countervailing benefit to consumers or competition under all of the

circumstances. Moreover, in light of Whirlpool's exclusive knowledge of the defects, the injury is not one that Plaintiff Schaeffer or the other members of the California Class could have reasonably avoided.

259. Whirlpool's acts and practices are unlawful because they violate Cal. Code §§ 1668, 1709 and 1710. Whirlpool's acts and practices are also unlawful because they violate the Song-Beverly Act, Cal. Civil Code § 1790, *et seq.* and Cal. Commercial Code § 2313.

260. Plaintiff Schaeffer, on behalf of herself and the other members of the California Class, seeks an order from this Court awarding restitution, disgorgement, injunctive relief, and all other relief allowed under Section 17200, *et seq.*, plus interest, attorneys' fees, and costs.

**SEVENTEENTH CAUSE OF ACTION**  
**Asserted On Behalf Of The California Class**  
**Consumers Legal Remedies Act**  
**(Violation of California Civil Code §§ 1750 *et seq.*)**

261. Plaintiffs allege and incorporate the above allegations by reference as if set forth herein at length.

262. Plaintiff Schaeffer brings this claim on behalf of herself and the California Class.

263. This claim arises under the California Consumer Legal Remedies Act, California Civil Code §§ 1750 *et seq.*

264. At all times relevant hereto, Plaintiff Schaeffer was a "consumer" as that term is defined in Civ. Code § 1761(d).

265. At all times relevant hereto, the Washing Machines constituted "goods" as

that term is defined in Civ. Code § 1761(a).

266. At all times relevant hereto, Whirlpool constituted a “person” as that term is defined in Civ. Code § 1761(c).

267. At all times relevant hereto, Plaintiff’s purchases of Whirlpool’s Washing Machine constituted a “transaction” as that term is defined in Civ. Code § 1761(e).

268. At all times relevant hereto, Whirlpool provided “services” to Plaintiff Schaeffer within the meaning of Civil Code § 1761(b).

269. The CLRA provides in relevant part that “[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: (5) Representing that goods . . . have . . . approval, characteristics, uses, benefits . . . which they do not have; ... (7) Representing that goods . . . are of a particular standard, quality or grade . . . if they are of another; ... (9) Advertising goods . . . with intent not to sell them as advertised; and (19) Inserting an unconscionable provision in the contract.” Civil Code §§ 1770(a)(5),(7), (9) and (19).

270. Whirlpool made uniform written representations that the Washing Machines are a high quality product that will perform as represented and, as set forth above, made specific representations regarding the capacity and characteristics of the Washing Machines that, as set forth above, were false, deceptive and/or misleading and were made in violation of the CLRA.

271. Plaintiff Schaeffer was a consumer under Civil Code §1761(d). Civil Code § 1780 (a)(2) permits any court of competent jurisdiction to enjoin practices that violate Civil Code § 1770.



**EIGHTEENTH CAUSE OF ACTION**  
**Asserted on Behalf of the Maryland Class**  
**(Violation of Maryland Consumer Protection Act,**  
**Md. Code Ann. § 13-303 et seq. ("MCPA"))**

272. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

273. Plaintiff Nordan brings this claim on behalf of herself and the Maryland Class.

274. Pursuant to the MCPA §§ 13-301(3), (9), deceptive trade practices include the "[f]ailure to state a material fact if the failure deceives or tends to deceive," and also include the "knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same."

275. Whirlpool knew of the Design Defects in the Washing Machines.

276. Whirlpool knew that the existence of the Design Defects in the Washing Machines was material to Plaintiff Nordan and the Maryland Class.

277. Whirlpool failed to disclose that the Washing Machines were inherently defective to Plaintiff Nordan and the Maryland Class.

278. Whirlpool's failure to disclose the material fact of the Design Defects deceived Plaintiff Nordan and the Maryland Class.

279. Whirlpool failed to disclose the Design Defects in the Washing Machines with the intent that consumers would rely upon that omission to purchase the Washing Machines.

280. Plaintiff Nordan and the Maryland Class have suffered injury as a result in that they purchased Washing Machines that they would not have otherwise purchased had

they known of the defect.

281. As a result, Plaintiff Nordan and the Maryland Class have suffered actual damages in the form of, *inter alia*, monies spent to repair the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees, and costs of suit.

**NINETEENTH CAUSE OF ACTION**  
**Asserted on Behalf of the North Carolina Class**  
**(Violation of North Carolina Unfair and Deceptive Trade Practices Act §75-1.1**  
**("NCGS"))**

282. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

283. Plaintiff Snyder brings this claim on behalf of herself and the North Carolina Class.

284. Pursuant to NCGS §75-1.1(a), "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful."

285. At all relevant times, Whirlpool's acts and commissions were in and affected commerce within the meaning of NCGS.

286. Whirlpool omitted and concealed material facts from its communications and disclosures to Plaintiff Snyder and all members of the North Carolina Class regarding the Design Defects in the Washing Machine.

287. Whirlpool's acts and omissions had a tendency or capacity to deceive Plaintiff Snyder and the North Carolina Class.

288. Plaintiff Snyder and the North Carolina Class were injured by reason of

Whirlpool's acts and omissions.

289. Whirlpool's conduct as described herein was unfair, deceptive, violating of public policy, and substantially injurious to Plaintiff Snyder and the North Carolina Class.

290. Plaintiff Snyder and the North Carolina Class have suffered actual damages in the form of, *inter alia* monies spent to repair the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees, and costs of suit.

**TWENTIETH CAUSE OF ACTION**  
**Asserted on Behalf of the Arizona Class**  
**Violation of Arizona's Consumer Fraud Act (A.R.S. §§44-1521, et seq.)**

291. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

292. Plaintiff Strong brings this claim on behalf of herself and the Arizona Class.

293. Arizona's Consumer Fraud Act ("CFA") prohibits "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice." Whirlpool's conduct, as described herein, is in violation of the CFA.

294. Whirlpool violated the CFA when it represented, through its advertising, warranties and other express representations, that the Washing Machines had

characteristics and benefits that they did not actually have.

295. Whirlpool violated the CFA when it falsely represented, through its advertising, marketing, and other express representations, that the Washing Machines were of a certain quality or standard when they were not.

296. Whirlpool violated the CFA by fraudulently concealing from and/or intentionally failing to disclose, to Plaintiff Strong and the Arizona Class, material information about the Washing Machines in a manner that was deceptive.

297. Whirlpool violated the CFA by holding the Washing Machines out as superior in quality, when, in fact, they are defective.

298. Whirlpool continues to violate the CFA by continuing to actively conceal material information about the Washing Machines and by representing to Plaintiff Strong and the members of the Arizona Class that the Washing Machines are free of defects and/or provide superior cleaning power.

299. As a direct and proximate result of Whirlpool's violations of the CFA, Plaintiff Strong and the Arizona Class have suffered injury in fact and/or actual damage, in that they purchased Washing Machines that have Design Defects that cause Mold Problems.

300. Plaintiff Strong and the Arizona Class members relied on Whirlpool's misrepresentations and omissions. Had Whirlpool disclosed in its marketing and sales statements the true quality of the Washing Machines, Plaintiff Strong and the Arizona Class would not have purchased, or would have paid significantly less for, the Washing Machines. Plaintiff Strong and the Arizona Class have suffered damages as a result.

301. Plaintiff Strong and the Arizona Class members have suffered an injury in

fact and lost money in that had Whirlpool disclosed the true nature and quality of the Washing Machines, they would not have purchased, or would have paid significantly less for, the Washing Machines.

302. Plaintiff Strong, on behalf of herself and all others similarly situated, demands judgment against Whirlpool for injunctive relief in the form of restitution and/or proportional disgorgement of funds paid by Plaintiff Strong and the Arizona Class to purchase the Washing Machines and/or disgorgement of funds received by Whirlpool from the sale of the Washing Machines, along with interest, attorneys' fees and costs.

**TWENTY-FIRST CAUSE OF ACTION**  
**Asserted on Behalf of the Texas Class**  
**(Violation of Texas Deceptive Trade Practices - Consumer Protection Act, TEX.**  
**BUS & COM CODE §17.41 et seq. ("DTPA"))**

303. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

304. Plaintiff Gardner brings this claim on behalf of herself and the Texas Class.

305. At all relevant times, Plaintiff Gardner and all members of the Texas Class were consumers within the meaning of DTPA.

306. At all relevant times hereto, Whirlpool engaged in trade and/or commerce within the meaning of DTPA.

307. The practices of Whirlpool violate DTPA for, *inter alia*, one or more of the following reasons:

- a. Whirlpool omitted and concealed material facts from its communications and disclosures to Plaintiff Gardner and all members of the Texas Class regarding the Design Defects inherent in the Washing Machines;



- b. Whirlpool made false and/or misleading statements of material fact regarding the Washing Machines, which statements were likely to deceive the public;
- c. Whirlpool knew, or was reckless in not knowing, that their statements about the Washing Machines were false and/or misleading;
- d. Whirlpool represented that a guarantee or warranty confers or involves rights or remedies which it does not have;
- e. Whirlpool represented that the Washing Machines had sponsorship, approval, characteristics uses and benefits that they did not have; and
- f. Whirlpool represented that the Washing Machines were of a particular standard, quality or grade, when they were not.

308. By the conduct described herein, Whirlpool has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce.

309. The representations and omissions by Whirlpool were likely to deceive reasonable consumers and a reasonable consumer would have relied on these representations and omissions.

310. Had Whirlpool disclosed all material information regarding the Washing Machines to Plaintiff Gardner and all of the Texas Class members, they would not have purchased the Washing Machines.

311. The foregoing acts and practices proximately caused Plaintiff Gardner and other members of the Texas Class to suffer actual damages in the form of, *inter alia*, monies spent to repair the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees and costs of suit.

**REQUEST FOR RELIEF**

Plaintiffs, individually and on behalf of all others similarly situated, pray for judgments against Whirlpool as follows:

- a. For an order certifying the Classes, under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), and appointing Plaintiffs as representatives of the Classes, and appointing the lawyers and law firms representing Plaintiffs as counsel for the Classes;
- b. For all recoverable compensatory, statutory and other damages sustained by Plaintiffs and the Classes;
- c. For costs;
- d. For both pre-judgment and post-judgment interest on any amounts awarded;
- e. For appropriate injunctive relief;
- f. For payment of attorneys' fees and expert fees as may be allowable under applicable law; and
- g. For such other and further relief as the Court may deem proper.

**DEMAND FOR JURY**

Plaintiffs demand trial by jury.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS  
AND THE PROPOSED CLASS



**PROOF OF SERVICE**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants today (February 13, 2009).

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# Exhibit G

FILED

AE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DEC 19 2006 NF  
DEC 19 2006  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

SUSAN MUNCH, LARRY BUTLER, JOSEPH  
LEONARD, KEVIN BARNES and VICTOR  
MATOS, individually and on behalf of all others  
similarly situated;

Plaintiff,

v.

Sears Roebuck & Co.,

Defendant.

06CV7023  
JUDGE LEFKOW  
MAGISTRATE JUDGE NOLAN

**CLASS ACTION COMPLAINT**

Plaintiffs Susan Munch, Larry Butler, Joseph Leonard, Kevin Barnes and Victor Matos, individually and on behalf of all others similarly situated, allege as and for their Class Action Complaint against defendant Sears Roebuck & Co. ("Sears" or "Defendant"), upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by their attorneys, as follows:

**INTRODUCTION**

1. This is a proposed class action brought by Plaintiffs on behalf of themselves and other consumers of Kenmore HE3, HE3t, HE4, and HE4t washing machines (collectively, "Kenmore HE Series Washing Machines"), as defined more fully herein. Plaintiffs and the proposed class purchased Kenmore HE Series Washing Machines from Sears.

2. This action arises out of the sales of Kenmore HE Series Washing Machines that Sears knew or should have known were defective and unreliable while continually marketing the washers as being innovative, cost effective and dependable. The Kenmore HE Series Washing

Machines fail to perform their intended purpose as a durable and suitable home clothes washing machine. Due to inherent design flaws, Kenmore HE Series Washing Machines repeatedly break down, do not clean clothes effectively, and otherwise fail to perform during normal home use. Kenmore HE Series Washing Machines fail to circulate and drain completely, resulting in the growth of mold and mildew in the machine, which causes strong, unpleasant odors in the machine and in the clothes "cleaned" in the machine.

3. Sears' acts and omissions in connection with its sale and delivery of these defective washing machines violates the consumer protection laws of the states of residence of Plaintiffs and the other members of the class, and constitutes common law fraud, breach of implied warranty and unjust enrichment.

#### **PARTIES**

4. *Susan Munch*. Plaintiff Susan Munch is a natural person and citizen of Illinois.
5. *Larry Butler*. Plaintiff Larry Butler is a natural person and citizen of Indiana.
6. *Joseph Leonard*. Plaintiff Joseph Leonard is a natural person and citizen of Minnesota.
7. *Victor Matos*. Plaintiff Victor Matos is a natural person and citizen of Kentucky.
8. *Kevin Barnes*. Plaintiff Kevin Barnes is a natural person and citizen of Texas.
9. *Sears Roebuck & Co.* Defendant Sears Roebuck & Co. is a foreign corporation with its principal place of business in Hoffman Estates, Illinois.

#### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction of the claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1332(d)(2)(A) in that the amount in controversy exceeds the sum or value

of \$5,000,000, exclusive of interest and costs, and is a class action in which members of the putative plaintiff class are citizens of States different from Defendants.

11. Venue is proper pursuant to 28 U.S.C. § 1391. Defendant is subject to personal jurisdiction in the Northern District of Illinois.

### **OVERVIEW**

12. Sears marketed and sold a line of front-loading washers, the Kenmore HE Series Washing Machines, throughout the United States. The machines are used primarily for consumer and household purposes. Sears sold the machines as part of its trade or business.

13. Sears marketed the Kenmore HE Series Washing Machines as a product that saved energy and water while providing outstanding cleaning and dependability, and consumers paid a premium for the machines, which were priced at the top of the washing machine market. Consumers often paid in excess of \$1,000.00 for a Kenmore HE Series Washer.

14. Sears provided an express warranty with Kenmore HE Series Washing Machines that guaranteed for the first year from the date of purchase free replacement of parts without labor charge.

15. Sears received a significant number of complaints regarding the performance of the Kenmore HE Series Washing Machines. Many of the complaints concerned premature and repeated mechanical failure; electronic control panel failure; clothes not being cleaned properly, including clothes being stained; mold and mildew growing in the machines; and otherwise not performing as a durable and dependable washing machine. The product as designed did not perform in accordance with the representations made by Sears or with the reasonable expectations of Plaintiffs and class members.



16. Despite receiving a high level of complaints about the product, Sears continued to market Kenmore HE Series Washing Machines as being dependable and providing outstanding cleaning. Sears never disclosed the many claims it received or the high incidence of repair of the Kenmore HE Series Washing Machines.

17. Sears manufactured and sold Kenmore Series HE Series Washing Machines to consumers when it knew or should have known the washers were not dependable and would not withstand normal operation. Kenmore HE Series Washing Machines were not of the standard, quality or grade that Sears represented them to be and were not fit for their expected uses. Sears omitted, or otherwise concealed or failed to disclose to Plaintiffs and the class members, the true unreliable and defective nature of Kenmore HE Series Washing Machines, and Sears failed to take other remedial action to correct its omissions or concealments.

18. Sears falsely represented that Kenmore HE Series Washing Machines provided outstanding performance as home washing machines, even though it knew or should have known that major components of the machines would fail when used and operated in a normal manner well before the reasonable expectations of the consumers using the product.

19. Moreover, prior to the Kenmore HE Series Washing Machines, Sears marketed and sold Calypsos Washing Machines which had many of the same defects as alleged herein, and which resulted in major litigation against Sears with Sears ultimately agreeing to pay damages to the owners of Calypsos Washing Machines. Because of the previous problems with Calypso Washing Machines, Sears knew or should have known defective washing machines, and failure to disclose those defects, would cause substantial damage to consumers.

20. As a result of Sears' failures and misconduct as detailed herein, Plaintiffs and the proposed class members have suffered actual damages in that their Kenmore HE Series Washing

Machines have not operated as represented by Sears. Plaintiffs and the proposed class have had to pay too high a purchase price for a washing machine that is defective and not fit for use. Additionally, Plaintiffs and the proposed class have been damaged by having to pay for costs associated with service calls, buy replacement parts, and buy extended warranties.

**NAMED PLAINTIFFS' ALLEGATIONS**

21.     **Susan Munch.**         On or about December 2004, Plaintiff purchased a Kenmore HE3t washing machine for approximately \$1,000. Plaintiff used the washer for normal home use.

22.         On or about June 2006, Plaintiff began experiencing problems with the HE3t washer in that the machine would stop running, break down or otherwise fail to operate. Additionally error codes such as F11 and FDL would appear.

23.         Plaintiff contacted Sears to correct the problem. Sears refused to repair the machine for free since the one year warranty had elapsed, and estimated repairs costs at \$655.00.

24.         Moreover, during the time Sears was requested to repair the machine, Sears repeatedly suggested Plaintiff purchase an additional extended warranty for approximately \$300.00 which Plaintiff was coerced into buying due to the already evident poor performance of the HE3t washer despite its having only been used for less than 18 months.

25.     **Larry Butler.**         On or about February 2005, Plaintiff purchased a Kenmore HE3t washing machine for approximately \$1,200. Plaintiff used the washer for normal home use.

26.         On or about November 2006, Plaintiff began experiencing problems with the HE3t washer in that the machine would stop running, break down or otherwise fail to operate.

Additionally error codes such as F11 and FDL would appear. Furthermore, the HE3t also developed a moldy musty smell.

27. Plaintiff contacted Sears to correct the problem. Sears refused to repair the machine without a \$54.00 service fee since the one year warranty had elapsed. Plaintiff paid approximately \$50 for replacement relays.

28. **Joseph Leonard.** On or about May 2005, Plaintiff purchased a Kenmore HE3t washing machine for approximately \$1,000. Plaintiff used the washer for normal home use.

29. On or about October 2006, Plaintiff began experiencing problems with the HE3t washer in that the machine would stop running, break down or otherwise fail to operate. Additionally error codes such as F11 and FDL would appear.

30. Plaintiff contacted Sears to correct the problem, and was charged \$55.00 for a service call.

31. Moreover, during the time Sears was requested to repair the machine, Sears repeatedly suggested Plaintiff purchase an additional extended warranty.

32. **Kevin Barnes.** On or about March 2005, Plaintiff purchased a Kenmore HE4t washing machine for approximately \$1,150.00. Plaintiff used the washer for normal home use.

33. On or about October 2006, Plaintiff began experiencing problems with the HE4t washer in that the machine would stop running, break down or otherwise fail to operate. Additionally error codes such as F11 and FDL would appear. Plaintiff spent approximately \$100.00 for parts to repair the machine.

34. **Victor Matos.** On or about January 2005, Plaintiff purchased a Kenmore HE4t washing machine for approximately \$1,200. Plaintiff used the washer for normal home use.

35. On or about August 2005, Plaintiff began experiencing problems with the HE4t washer in that the machine would stop running, break down or otherwise fail to operate. Additionally error codes such as F11 and FDL would appear.

36. Plaintiff contacted Sears to correct the problem. Sears refused to repair the machine for free since the one year warranty had elapsed. Plaintiff paid approximately \$141.00 for parts to repair the machine.

37. Moreover, during the time Sears was requested to repair the machine, Sears repeatedly suggested Plaintiff purchase an additional extended warranty.

#### **CLASS ACTION ALLEGATIONS**

38. Plaintiffs bring all claims herein as class claims pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to the class defined below.

##### **A. Class Definition(s)**

39. The (b)(2) Injunctive Relief Class consists of:

All consumers who own a Kenmore HE Series washing machine.<sup>1</sup>

40. The (b)(3) State Sub-Classes consist of:

**Illinois:** All persons in Illinois who own a Kenmore HE Series washing machine (the "Illinois Sub-Class");

**Indiana:** All persons in Indiana who own a Kenmore HE Series washing machine (the "Indiana Sub-Class");

<sup>1</sup> Plaintiff reserves the right to amend the class definition based upon future investigation, discovery and the proofs at trial.

**Minnesota:** All persons in Minnesota who own a Kenmore HE Series washing machine (the “Minnesota Sub-Class”);

**Texas:** All persons in Texas who own a Kenmore HE Series washing machine (the “Texas Sub-Class”);

**Kentucky:** All persons in Kentucky who own a Kenmore HE Series washing machine (the “Kentucky Sub-Class”);

Excluded from the Class(es) are: Defendants, any entities in which they have a controlling interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and members of such persons immediate families, and the presiding judge(s) in this case and his, her or their immediate family.

**B. Numerosity**

41. At this time, Plaintiffs do not know the exact size of the Class; however, due to the nature of the trade and commerce involved, Plaintiffs believe that the Class members are so numerous that joinder of all members is impracticable. The number and identities of Class members is administratively feasible and can be determined through appropriate discovery.

**C. Commonality**

42. There are questions of law or fact common to the class, including at least the following:

- (a) Whether Sears knew or should have known that Kenmore Series HE Washing Machines are not dependable and are not suitable for use as home washing machines, and otherwise are not as warranted and represented by Sears;
- (b) Whether Sears concealed from and/or failed to disclose to Plaintiffs and the class members material facts including that Kenmore HE Series Washing Machines are not suitable;



- (c) Whether Sears engaged in unfair or deceptive acts and/or practices when it failed or omitted to disclose either through advertising, warranties and other express representations, the unreliability of Kenmore HE Series Washing Machines;
- (d) Whether Sears was unjustly enriched by its conduct;
- (e) Whether Sears had a pattern and practice of marketing extended warranties to further profit from Plaintiff and the class;
- (f) Whether Plaintiffs and the class members are entitled to compensatory damages, and the measure of such damages; and
- (g) Whether Plaintiffs and the class members are entitled to punitive damages, and the measure of such damages.

**D. Typicality**

43. Plaintiffs have the same interests in this matter as all other members of the Class, and their claims are typical of all members of the class.

**E. Adequacy**

44. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Plaintiffs will fairly and adequately represent the interests of the class members and do not have interests adverse to the class.

**F. The Prerequisites of Rule 23(b)(2) are Satisfied**

45. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendant has acted or refused to act on grounds generally applicable to the class thereby making appropriate final injunctive and equitable relief with respect to the class as a whole.

46. The prosecution of separate actions by members of the class would create a risk of establishing incompatible standards of conduct for Defendant. For example, one court might

decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of class members, who would not be parties to those actions.

47. Defendant's actions are generally applicable to the class as a whole, and Plaintiffs seek, *inter alia*, equitable remedies with respect to the class as a whole.

48. Defendant's systemic policy and practices make declaratory relief with respect to the class as a whole appropriate.

**G. The Prerequisites of Rule 23(b)(3) are Satisfied**

49. This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the class defined above.

**FRAUDULENT CONCEALMENT**

50. Throughout the Class period, Defendant affirmatively concealed from Plaintiffs and class members the defects described herein.

51. Defendant had a duty to inform Plaintiffs and Class of the defects described herein, which it knew of or should have known. Notwithstanding its duty, Defendant never

disclosed the defects to Plaintiffs or the Class; rather, Defendant attributed resulting mechanical failures to soap, water issues or other conduct.

52. Moreover, as part of the scheme, after the warranty period had expired Defendant marketed extended warranties for hundreds of dollars, thus further attempting to profit from the misfortune of Kenmore HE Series Washer purchasers.

53. Despite exercising reasonable diligence, Plaintiffs and Class could not have discovered the defects or Defendants' scheme to avoid disclosure of the defect. Thus, running of the statute of limitations has been tolled with respect to any claims that Plaintiffs or the Class have brought or could have brought as a result of the unlawful and fraudulent course of conduct described herein.

54. Defendants are further estopped from asserting any statute of limitations defense, contractual or otherwise, to the claims alleged herein by virtue of its acts of fraudulent concealment.

### **CAUSES OF ACTION**

#### **COUNT I – Brought on Behalf of Illinois Class (Violation of Illinois Consumer Fraud and Deceptive Business Practices Act)**

55. Plaintiffs repeat and reallege the allegations of the prior paragraphs as if fully stated herein.

56. 56. At all times relevant hereto, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq. (the "Act").

57. Section 2 of the Act provides in relevant part as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use of or employment of any deceptive, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or

omission of such material fact, or the use of employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby, In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

815 ILCS 505/2 (footnotes omitted).

58. Plaintiffs and other class members, as purchasers of Kenmore HE Series Washing Machines, are consumers within the meaning of the ICFA given that Defendant's business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

61. Section 2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2, renders unlawful the "use or employment of any deception [including the] concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of any trade or commerce..." Illinois case law holds that reliance on the deception is not an element of a consumer fraud claim.

62. Consumers (such as Plaintiffs) were entitled to disclosure of all material facts because

- (a) A significant risk of failure would be a material fact in a consumer's decision-making process, and
- (b) Without Sears' disclosure, consumers would not know that there is any risk of failure.

63. Moreover, because Sears' warranties are limited in duration, consumers were further entitled to know that failures might not exhibit themselves until after the warranties expired, and if that occurred, Sears was not committing to repair the condition. All of these facts were material to consumers' (such as Plaintiffs') purchase decisions.

64. Specifically, at all times relevant, Sears continuously and consistently failed to disclose to consumers (such as Plaintiffs):

- (a) there was a substantial risk of mechanical failure and/or moldy smells;
- (b) that failures might not exhibit themselves until after the warranty has expired; and
- (c) that if failures exhibit themselves after the warranty period expired that Sears was not committing to making repairs.

65. Sears intended that Plaintiffs and the class would rely on the deception by purchasing the Kenmore HE Series Washing Machines, unaware of the material facts described above. This conduct constitutes consumer fraud within the meaning of the ICFA.

66. Defendant has committed deceptive acts or practices within the meaning of the ICFA by engaging in the acts and practices alleged herein, including, but not limited to, its failure to disclose the material defects.

67. Defendant's conduct alleged herein is furthermore unfair insofar as it offends public policy; is so oppressive that the consumer has little alternative but to submit; and causes consumers substantial injury.

68. As a direct and proximate result of the unfair acts or practices of Defendant alleged herein, Plaintiffs and other members of the class were damaged.

WHEREFORE, Plaintiffs, individually and on behalf of the class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the class defined herein;
- B. Designating Plaintiffs as representatives of the class and their counsel as class counsel;



- C. Entering judgment in favor of Plaintiffs and the class and against Defendant;
- D. Awarding Plaintiffs and class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Awarding Plaintiffs and the class members punitive damages, in an amount to be determined at trial;
- F. Imposing a constructive trust on amounts wrongfully collected from Plaintiffs and the class members pending resolution of their claims herein;
- G. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines;
- H. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to pay to repair and/or replace defective Kenmore HE Series Washing Machines, reimburse customers who have purchased extended warranties; and
- I. Granting such further relief as the Court deems just.

**COUNT II – Brought on Behalf of Indiana Class  
(Violation of Indiana Deceptive Consumers Sales Act)**

69. Plaintiffs repeat and reallege the allegations of the prior paragraphs as if fully stated herein.

70. This Count is brought on behalf of Plaintiff Butler and the Indiana Class. At all times relevant hereto, there was in full force and effect the Indiana Deceptive Consumers Sales Act, Ind. Code § 24-5-0.5 et seq. (the "Act").

71. Section 0.5-4 of the Act provides in relevant part as follows:

(a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act. The court may award reasonable attorney fees to the party that prevails in an action under this subsection.

72. Plaintiffs and other class members, as purchasers of Kenmore HE Series Washing Machines, are consumers within the meaning of the Act given that Defendant's business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

73. Once the Kenmore HE Series Washing Machine's failure risk became significant, consumers (such as Plaintiffs) were entitled to disclosure of that fact because:

- (a) A significant risk of failure would be a material fact in a consumer's decision-making process, and
- (b) Without Sears' disclosure, consumers would not know that there is any risk of failure.

74. Moreover, because Sears' warranties are limited in duration, consumers were further entitled to know that failures might not exhibit themselves until after the warranties expired, and if that occurred, Sears was not committing to repair the condition. All of these facts were material to consumers' (such as Plaintiffs') purchase decisions.

75. Specifically, at all times relevant, Sears continuously and consistently failed to disclose to consumers (such as Plaintiffs) that:

- (a) there was a substantial risk of mechanical failure and/or moldy smells;
- (b) failures might not exhibit themselves until after the warranty has expired; and
- (c) if failures exhibit themselves after the warranty period expired that Sears was not committing to making repairs.

76. Sears intended that Plaintiffs and the class would rely on the deception by purchasing the Kenmore HE Series Washing Machines, unaware of the material facts described above. This conduct constitutes consumer fraud within the meaning of the various consumer protection statutes.

77 Defendant has committed deceptive acts or practices within the meaning of the Act by engaging in the acts and practices alleged herein, including, but not limited to, its failure to disclose the material defects.

78 Defendant's conduct alleged herein is furthermore unfair insofar as it offends public policy; is so oppressive that the consumer has little alternative but to submit; and causes consumers substantial injury.

79 As a direct and proximate result of the unfair acts or practices of Defendant alleged herein, Plaintiffs and other members of the class were damaged.

WHEREFORE, Plaintiffs, individually and on behalf of the class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the class defined herein;
- B. Designating Plaintiffs as representatives of the class and their counsel as class counsel;
- C. Entering judgment in favor of Plaintiffs and the class and against Defendant;
- D. Awarding Plaintiffs and class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Awarding Plaintiffs and the class members punitive damages, in an amount to be determined at trial;
- F. Imposing a constructive trust on amounts wrongfully collected from Plaintiffs and the class members pending resolution of their claims herein;
- G. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines;
- H. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to pay to repair and/or replace defective Kenmore HE Series Washing

Machines, reimburse customers who have purchased extended warranties;  
and

I. Granting such further relief as the Court deems just.

**COUNT III – Minnesota  
(Violation of Minnesota Prevention of Consumer Fraud Act)**

§0. Plaintiffs repeat and reallege the allegations of the prior paragraphs as if fully  
stated herein.

§1. This Count is brought on behalf of Plaintiff Leonard and the Minnesota Class.

§2. At all times relevant hereto, there was in full force and effect the Minnesota  
Prevention of Consumer Fraud Act, Minn. Stat. Ann. § 325F et seq. (the “Act”).

§3. Section 69 of the Act provides in relevant part as follows:

"Subdivision 1: The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein."

"Subdivision 4: Solicitation of money for merchandise not ordered or services not performed. The act, use, or employment by any person of any solicitation for payment of money by another by any statement or invoice, or any writing that could reasonably be interpreted as a statement or invoice, for merchandise not yet ordered or for services not yet performed and not yet ordered, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein."

§4. Plaintiffs and other class members, as purchasers of Kenmore HE Series Washing  
Machines, are consumers within the meaning of the Act given that Defendant's business  
activities involve trade or commerce, are addressed to the market generally and otherwise  
implicate consumer protection concerns.

85. Once the Kenmore HE Series Washing Machine's failure risk became significant, consumers (such as Plaintiffs) were entitled to disclosure of that fact because:

- (a) A significant risk of failure would be a material fact in a consumer's decision-making process, and
- (b) Without Sears' disclosure, consumers would not know that there is any risk of failure.

86. Moreover, because Sears' warranties are limited in duration, consumers were further entitled to know that failures might not exhibit themselves until after the warranties expired, and if that occurred, Sears was not committing to repair the condition. All of these facts were material to consumers' (such as Plaintiffs') purchase decisions.

87. Specifically, at all times relevant, Sears continuously and consistently failed to disclose to consumers (such as Plaintiffs):

- (a) there was a substantial risk of mechanical failure and/or moldy smells;
- (b) that failures might not exhibit themselves until after the warranty has expired; and
- (c) that if failures exhibit themselves after the warranty period expired that Sears was not committing to making repairs.

88. Sears intended that Plaintiffs and the class would rely on the deception by purchasing the Kenmore HE Series Washing Machines, unaware of the material facts described above. This conduct constitutes consumer fraud within the meaning of the various consumer protection statutes.

89. Defendant has committed deceptive acts or practices within the meaning of the Act by engaging in the acts and practices alleged herein, including, but not limited to, its failure to disclose the material defects.



90. Defendant's conduct alleged herein is furthermore unfair insofar as it offends public policy; is so oppressive that the consumer has little alternative but to submit; and causes consumers substantial injury.

91. As a direct and proximate result of the unfair acts or practices of Defendant alleged herein, Plaintiffs and other members of the class were damaged.

WHEREFORE, Plaintiffs, individually and on behalf of the class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the class defined herein;
- B. Designating Plaintiffs as representatives of the class and their counsel as class counsel;
- C. Entering judgment in favor of Plaintiffs and the class and against Defendant;
- D. Awarding Plaintiffs and class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Awarding Plaintiffs and the class members punitive damages, in an amount to be determined at trial;
- F. Imposing a constructive trust on amounts wrongfully collected from Plaintiffs and the class members pending resolution of their claims herein;
- G. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines;
- H. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to pay to repair and/or replace defective Kenmore HE Series Washing Machines, reimburse customers who have purchased extended warranties; and
- I. Granting such further relief as the Court deems just.

**COUNT IV – Kentucky**  
**(Violation of Kentucky Consumer Fraud and Deceptive Business Practices Act)**

104. Plaintiffs repeat and reallege the allegations of the prior paragraphs as if fully stated herein.

105. At all times relevant hereto, there was in full force and effect the Kentucky Consumer Fraud and Deceptive Business Practices Act, Ky. Rev. Stat. § 367.220 et seq (the “Act”).

106. Section 170 of the Act provides in relevant part as follows:

- (1) Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
- (2) For the purposes of this section, unfair shall be construed to mean unconscionable.

107. Plaintiffs and other class members, as purchasers of Kenmore HE Series Washing Machines, are consumers within the meaning of Consumer Fraud Acts given that Defendant’s business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

108. Once the Kenmore HE Series Washing Machine’s failure risk became significant, consumers (such as Plaintiffs) were entitled to disclosure of that fact because:

- (a) A significant risk of failure would be a material fact in a consumer’s decision-making process, and
- (b) Without Sears’ disclosure, consumers would not know that there is any risk of failure.

109. Moreover, because Sears’ warranties are limited in duration, consumers were further entitled to know that failures might not exhibit themselves until after the warranties expired, and if that occurred, Sears was not committing to repair the condition. All of these facts were material to consumers’ (such as Plaintiffs’) purchase decisions.

119. Specifically, at all times relevant, Sears continuously and consistently failed to disclose to consumers (such as Plaintiffs):

- (a) there was a substantial risk of mechanical failure and/or moldy smells;
- (b) that failures might not exhibit themselves until after the warranty has expired; and
- (c) that if failures exhibit themselves after the warranty period expired that Sears was not committing to making repairs.

120. Sears intended that Plaintiffs and the class would rely on the deception by purchasing the Kenmore HE Series Washing Machines, unaware of the material facts described above. This conduct constitutes consumer fraud within the meaning of the various consumer protection statutes.

121. Defendant has committed deceptive acts or practices within the meaning of the Act by engaging in the acts and practices alleged herein, including, but not limited to, its failure to disclose the material defects.

122. Defendant's conduct alleged herein is furthermore unfair insofar as it offends public policy; is so oppressive that the consumer has little alternative but to submit; and causes consumers substantial injury.

123. As a direct and proximate result of the unfair acts or practices of Defendant alleged herein, Plaintiffs and other members of the class were damaged.

WHEREFORE, Plaintiffs, individually and on behalf of the class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the class defined herein;

- B. Designating Plaintiffs as representatives of the class and their counsel as class counsel;
- C. Entering judgment in favor of Plaintiffs and the class and against Defendant;
- D. Awarding Plaintiffs and class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Awarding Plaintiffs and the class members punitive damages, in an amount to be determined at trial;
- F. Imposing a constructive trust on amounts wrongfully collected from Plaintiffs and the class members pending resolution of their claims herein;
- G. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines;
- H. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to pay to repair and/or replace defective Kenmore HE Series Washing Machines, reimburse customers who have purchased extended warranties; and
- I. Granting such further relief as the Court deems just.

**COUNT V**  
**(Common Law Fraud by Omission)**

115. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully stated herein.

116. Sears, through its experience, was in a position of superiority over Plaintiffs and class members with respect to knowledge that: (a) there was a substantial risk of mechanical failure and/or moldy smells; (b) that failures might not exhibit themselves until after the warranty has expired; and (c) that if failures exhibit themselves after the warranty period expired that Sears was not committing to making repairs.

117. In other words, once the risk of the failures becomes significant, consumers (such as Plaintiffs and the class members) were entitled to disclosure of that fact because:

- (a) A significant risk of failure would be a material fact in a consumer's decision-making process, and
- (b) Without Sears' disclosure, consumers would not know that there is any risk of failure.

118. Moreover, because Sears' warranties are limited in duration, consumers were further entitled to know that failures might not exhibit themselves until after their warranties expire, and if that occurred, Sears was not committing to repair the condition. And at that time, at the cost of hundreds of dollars, Plaintiffs and the class would be coerced into buying an extended warranty. All of these facts were material to consumers' (such as Plaintiffs') purchase decisions.

119. Plaintiffs and the class reasonably relied on Sears to disclose those material facts. If Sears had disclosed the above facts to Plaintiffs and the class, they could have (and would have) prevented economic injury by either negotiating a lower price to reflect the risk or simply avoiding the risk by purchasing a different manufacturer's windows.

120. Specifically, at all times relevant, Sears continuously and consistently failed to disclose to consumers (such as Plaintiffs):

- (a) there was a substantial risk of mechanical failure and/or moldy smells;
- (b) that failures might not exhibit themselves until after the warranty has expired; and
- (c) that if failures exhibit themselves after the warranty period expired that Sears was not committing to making repairs.

121. Sears failed to disclose those material facts and, as a proximate result, Plaintiffs and the class have been damaged because: (a) they purchased Kenmore HE Series Washing



Machines that developed the undisclosed risk – failures, (b) the condition exhibited itself after Plaintiffs' warranty period expired, and (c) Sears refused to repair the condition because the warranties had expired.

WHEREFORE, Plaintiffs, individually and on behalf of the class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the class defined herein;
- B. Designating Plaintiffs as representatives of the class and their counsel as class counsel;
- C. Entering judgment in favor of Plaintiffs and the class and against Defendant;
- D. Awarding Plaintiffs and class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Awarding Plaintiffs and the class members punitive damages, in an amount to be determined at trial;
- F. Imposing a constructive trust on amounts wrongfully collected from Plaintiffs and the class members pending resolution of their claims herein;
- G. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines;
- H. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to pay to repair and/or replace defective Kenmore HE Series Washing Machines, reimburse customers who have purchased extended warranties; and
- I. Granting such further relief as the Court deems just.

**COUNT VI**  
**(Breach of Implied Warranty of Merchantability)**

121. Plaintiffs repeat and reallege the allegations of the prior paragraphs as if fully stated herein.

122. At all times relevant hereto, there was duty imposed by law which requires that a manufacturer or seller's product be reasonably fit for the purposes for which such products are used, and that product be acceptable in trade for the product description.

123. Notwithstanding the aforementioned duty, at the time of delivery, Kenmore HE Series Washing Machines sold to Plaintiffs and the class were not merchantable.

124. As documented in its own business records and elsewhere, Defendant was notified that the Kenmore HE Series Washing Machines were not merchantable with a reasonable time after the latent defect manifested itself to Plaintiffs and the class.

125. As a result of the non-merchantability of the Kenmore HE Series Washing Machines described herein, Plaintiffs and other members of the class sustained a loss or damages.

WHEREFORE, Plaintiffs, individually and on behalf of the class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the class defined herein;
- B. Designating Plaintiffs as representatives of the class and their counsel as class counsel;
- C. Entering judgment in favor of Plaintiffs and the class and against Defendant;
- D. Awarding Plaintiffs and class members their individual damages and attorneys' fees and allowing costs, including interest thereon;

- E. Awarding Plaintiffs and the class members punitive damages, in an amount to be determined at trial;
- F. Imposing a constructive trust on amounts wrongfully collected from Plaintiffs and the class members pending resolution of their claims herein;
- G. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines;
- H. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to pay to repair and/or replace defective Kenmore HE Series Washing Machines, reimburse customers who have purchased extended warranties; and
- I. Granting such further relief as the Court deems just.

**COUNT VII**  
**(Unjust Enrichment (Alternative Count))**

127 Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully stated herein.

128 Plaintiffs and the class have conferred benefits on Defendant by purchasing Kenmore HE Series Washing Machines.

129 Defendants have knowingly and willingly accepted these benefits from Plaintiffs and the class.

130 Under the circumstances, it is inequitable for Defendant to retain these benefits at the expense of Plaintiffs and the class.

131 Defendant has been unjustly enriched at the expense of and detriment of Plaintiffs and the class by wrongfully collecting money to which Defendant, in equity, is not entitled.

132 Plaintiffs and the class are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

133. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs and the class have suffered injury and are entitled to reimbursement, restitution and disgorgement from Defendant of the benefits conferred by Plaintiffs and the class.

134. Plaintiffs and the class have no adequate remedy at law.

135. Plaintiffs seek to obtain a pecuniary benefit for the class in the form of all reimbursement, restitution and disgorgement from Defendant. Plaintiffs' counsel are entitled to recover their reasonable attorneys' fees and expenses as a result of the conference of a pecuniary benefit on behalf of the class, and will seek an award of such fees and expenses at the appropriate time.

WHEREFORE, Plaintiffs, individually and on behalf of the class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the class defined herein;
- B. Designating Plaintiffs as representatives of the class and their counsel as class counsel;
- C. Entering judgment in favor of Plaintiffs and the class and against Defendant;
- D. Awarding Plaintiffs and class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Awarding Plaintiffs and the class members punitive damages, in an amount to be determined at trial;
- F. Imposing a constructive trust on amounts wrongfully collected from Plaintiffs and the class members pending resolution of their claims herein;
- G. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines;

- H. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to pay to repair and/or replace defective Kenmore HE Series Washing Machines, reimburse customers who have purchased extended warranties; and
- I. Granting such further relief as the Court deems just.

### COUNT XIII

#### Declaratory Relief Pursuant To 28 U.S.C. § 2201

136. Plaintiffs repeat and reallege the allegations of the prior paragraphs, as if fully stated herein.

137. There is an actual controversy between Defendant and all class members concerning the legality of Defendant's marketing of Kenmore HE Series Washing Machines as innovative, cost effective and dependable when it knew or should have known them to be defective and unreliable.

138. Pursuant to 28 U.S.C. § 2201, this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." Plaintiffs and class members are interested parties who seek a declaration of their rights and legal relations vis-à-vis Defendant with regard to sales of the Kenmore HE Series Washing Machines.

139. Specifically, Plaintiffs seek an Order by this Court:

- A. Declaring the warranty void;
- B. Declaring the time limit void;
- C. Compelling Defendant to establish a program to inspect, repair and replace defective Kenmore HE Series Washing Machines
- D. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Sears customers who have had to



pay to repair and/or replace defective Kenmore HE Series Washing Machines, reimburse customers who have purchased extended warranties; and

E. Granting such further relief as the Court deems just.

**JURY DEMAND**

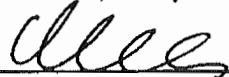
Plaintiffs demand a trial by jury on all issues so triable.

DATED: December 19, 2006

Respectfully submitted,

**SUSAN MUNCH, LARRY BUTLER, JOSEPH  
LEONARD, KEVIN BARNES and VICTOR  
MATOS,**

**Class Plaintiffs,**

By:   
One of Their Attorneys

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# Exhibit H

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

STANLEY FISHMAN, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

GENERAL ELECTRIC COMPANY,

Defendant.

Civil Action No.

**CLASS ACTION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Plaintiff Stanley Fishman, individually and on behalf of all others similarly situated,  
alleges as follows:

**INTRODUCTION**

1. Plaintiff brings this class action individually and on behalf of the Classes defined below (the "Classes" or collectively the "Class") against General Electric Company ("GE") to obtain relief, including, among other things, damages and injunctive relief.

2. This class action is brought to remedy violations of law in connection with GE's design, manufacture, marketing, advertising, selling, warranting, and servicing of its front-

loading washer machines (the "Washing Machines"). These Washing Machines have serious design defects (collectively, "Design Defects") that cause them to:

- a. accumulate mold and mildew and/or residue or similar growth within the Washing Machines;
- b. produce a moldy, mildewy or similar odor that permeates the Washing Machine and clothes and other items washed in the Washing Machine;
- c. fail to clean the Washing Machines and remove moisture, residue, growth, and/or bacteria or like substances that lead to the formation of mold, mildew, and/or like substances and/or associated foul odors;
- d. be unusable in the manner, to the extent to, and for the purpose for which the Washing Machines were advertised, marketed, and sold;
- e. require regular and repeated cleaning and maintenance expenses that were never disclosed prior to purchase.

The problems caused by the Design Defects are collectively referred to as "Mold Problems."

3. The automatic clothes washer market is comprised of both vertical axis (*i.e.*, top-loading) and horizontal axis (*i.e.*, front-loading) washing machines. GE offers both top-loading and front-loading washers. Historically, consumers purchased vertical axis washing machines, which as part of their operation clean and rid themselves of the byproducts of washing clothes. Although consumers expect, based upon decades of experience, that GE's Washing Machines will also effectively clean and rid themselves of these washing byproducts, the machines do not.

4. The Washing Machines do not effectively clean and rid themselves of the byproducts of washing clothes due to the Design Defects, which include, among other things, the failure of the Washing Machines to:

- a. Properly rinse and drain the internal components of the Washing Machine;
- b. Sufficiently eliminate the byproducts of washing clothes;
- c. Utilize materials made with sufficient or appropriate anti-microbial additives to prevent, impede, or reduce the growth of mold, mildew, or biofilm (*i.e.*, the filmy substance that develops within the Washing Machines).

5. As a result of these failures, the Washing Machines do not satisfy the purpose for which they were purchased (*i.e.*, to clean clothes, towels, bedding, and other washable items and to make those items smell fresh and clean).

6. GE fails to disclose the Design Defects and Mold Problems, and falsely advertises and misrepresents or omits or fails to disclose the characteristics, benefits, quality, grade, standard, and uses of its Washing Machines by representing them as “washers” since the machines fail their most basic and fundamental purpose: making items washed within them clean. Items washed in the Washing Machines smell foul due to the Mold Problems.

7. GE also fails to disclose the extraordinary maintenance and associated expenses that its Washing Machines require to combat the accumulation of mold, mildew, and biofilm. The extraordinary maintenance includes, but is not limited to: keeping the door open between washes, which presents a safety risk; running frequent and lengthy hot-water cleaning cycles; running monthly “BasketClean” cycles with bleach; the need to buy and use special washing machine cleaners; and the need to wipe the interior of the Washing Machines, the door glass, and the folds of the rubber door gasket dry after use. This information is material because a reasonable consumer would want to know how much maintenance is required for the Washing Machines before purchasing one.



8. As a result of GE's concealment and failure to disclose the Design Defects, Mold Problems, and the extraordinary maintenance required, the Washing Machines are worth less than the price paid by Plaintiff and the Class and cost more to own and operate than GE represented.

9. Plaintiff asserts claims for violation of the New Jersey Consumer Fraud Act, breach of express warranty, breach of implied warranty, and unjust enrichment.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and this is a class action involving more than 100 class members in which Plaintiff and other Class members and GE are citizens of different states.

11. Venue is proper under 28 U.S.C. § 1391 because GE does substantial business in this judicial district and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district. At all pertinent times, GE was and is in the business of marketing, advertising, distributing, and selling products, including the Washing Machines, throughout New Jersey and nationwide. The Washing Machines that form the basis of this Complaint were purchased from GE and/or from GE's authorized dealers and placed in the stream of commerce by GE.

### **PARTIES**

12. Plaintiff Stanley Fishman is a citizen of New Jersey, and resides in West Orange, New Jersey. On or about November 2006, Plaintiff purchased a GE Washing Machine, which was installed in his home. Within approximately six months of delivery, Plaintiff began to

experience mold, mildew, and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Washing Machine.

13. Defendant GE is a New York corporation with its principle place of business at 3135 Easton Turnpike, Fairfield, Connecticut.

14. GE manufactures and sells thousands of Washing Machines each year, a substantial portion of which are sold or offered for sale in New Jersey. GE has sold, either directly or indirectly, thousands of its defective Washing Machines nationwide and in the State of New Jersey.

#### **FACTUAL BACKGROUND**

15. GE holds itself out to the public as a manufacturer of safe, technologically advanced, and easy-to-use home appliances, including Washing Machines. GE is the largest company in the world. The company proudly boasts of its innovation and advanced technology, its prominence as a catalyst for change, and the benefits that it provides customers and society. GE's breadth of operations includes more than 20 industries and the company employs more than 40,000 engineers and scientists. Given its size and prominence, consumers trust that GE products will meet or exceed GE's representations.

16. GE, as one part of its business, manufactures, produces, distributes, and sells Washing Machines, which it makes available throughout the United States.

17. GE sells Washing Machines both directly and through its network of authorized dealers including leading retailers and on-line merchants.

18. GE provided Plaintiff and each purchaser of a Washing Machine with an express one-year factory warranty.

19. In conjunction with each sale, GE marketed, advertised, and warranted that the Washing Machines were of merchantable quality and fit for the ordinary purpose for which such goods were used and were free from defects, or at a minimum would not cause Mold Problems.

20. GE also made express representations about the quality of its Washing Machines.

21. In addition to making express representations of the quality of its Washing Machines, GE also touted its Washing Machines as ENERGY STAR washers.

22. To qualify for the ENERGY STAR label, a manufacturer must comply with current ENERGY STAR Eligibility Criteria, which define the performance criteria that must be met for use of the ENERGY STAR certification mark on clothes washers and specifying the testing criteria for clothes washers.

23. Every Washing Machine has the ENERGY STAR logo indicating that the machine is ENERGY STAR compliant. The ENERGY STAR logo appears prominently on the front of the machines to ensure that customers see the logo.

24. Members of the Class purchased the Washing Machines, in part, because the machines were ENERGY STAR compliant and would lead to water and energy savings. In reality, at the recommendation of GE, Class members have to regularly run empty cycles of hot water and/or bleach and/or other products to combat the Mold Problems, contrary to the representation that the machines would lead to water and energy savings.

25. GE had exclusive knowledge that the Washing Machines have a Design Defect and that the Design Defect causes Mold Problems. These facts were not known to Plaintiff and the other members of the proposed Classes. GE's exclusive knowledge of these material facts gave rise to a duty to disclose such facts, which GE failed to perform.

26. GE represented that the Washing Machines were ENERGY STAR compliant, while concealing from customers the need to run extra cycles of hot water and/or bleach and/or other products to combat the Mold Problems. GE's representations concerning the efficiency of the Washing Machines gave rise to a duty to disclose the need to run extra cycles. Upon information and belief, GE has neither considered nor taken into account the extra loads run through the Washing Machines in an attempt to clean the machines.

27. Further, as the Mold Problems became undeniable, GE began selling or recommending that consumers purchase Tide Washing Machine cleaner to ameliorate the Mold Problems. Tide Washing Machine cleaner is one of several products designed, manufactured, and marketed to address Mold Problems in the Washing Machines.

28. GE provides care instructions with its Owner's Manual & Installation Instructions. The manual does not make any disclosure about the Mold Problems when used as instructed. GE fails to inform or otherwise disclose to consumers that, even when operated as instructed by GE, Mold Problems will occur in the Washing Machines and that the Mold Problems will result regardless of washer maintenance due to the Design Defects.

29. Plaintiff purchased a Washing Machine for household purposes, and at all pertinent times used the machine for its intended purpose, used the recommended high-efficiency ("HE") detergent, and have nonetheless experienced Mold Problems. Plaintiff contacted GE concerning the Mold Problems and unsuccessfully tried GE's various recommendations to fix the problem.

30. GE falsely represented that Plaintiff and members of the Class would "spend less time on family laundry and more time doing family activities" due to the extraordinary maintenance required of its Washing Machines.

31. After all of the extraordinary maintenance failed, GE suggested that Plaintiff leave the washer door open between uses to ameliorate the Mold Problems. Leaving the door open, however, changes the appearance of the Washing Machines and poses obvious safety risks to children and pets; indeed, a young child drowned in a Kenmore front loading washer, which prompted the U.S. Consumer Product Safety Commission to open an investigation regarding safety standards for front loaders. Despite following GE's instruction to leave the washer door open between uses, Plaintiff still experienced Mold Problems with his Washing Machine.

32. Plaintiff and other Class members experienced and continue to experience Mold Problems even though they have followed the instructions provided by GE including those set forth in GE's manual.

33. GE intended for customers to believe its statements and representations about its Washing Machines and to trust that its Washing Machines were and are of first-rate quality. GE concealed material facts regarding the Washing Machines, including the Design Defects, which cause the Washing Machines to experience the Mold Problems, even though consumers used the Washing Machines as instructed by GE.

34. The Washing Machines are defective in many respects. Due to those defects, the use of the Washing Machines – as instructed by GE – resulted in conditions creating an excessive propensity for the Washing Machines to accumulate mold and mildew, residue or growth, and moldy odors. These defects include, among other things,

- a. the failure of the Washing Machines to properly drain water and to avoid lingering moisture;



- b. the failure of the Washing Machines to sufficiently rinse away soils and residues left after a washing cycle to prevent the accumulation of residues and similar items that contribute to the formation of mold and mildew and moldy odors;
- c. the failure of the Washing Machines to prevent the accumulation of residues and growths that contribute to the formation of mold and mildew and moldy odors and like substances when used as instructed and recommended by GE; and
- d. the failure of the Washing Machines to clean themselves in a manner necessary for the proper functioning of the machines for the intended purpose.

35. Upon information and belief, defects in the drum also play a role in causing Mold Problems. Due to the defects in the drum and tubs, the machines do not fully or properly drain in connection with each and every wash cycle and/or do not sufficiently permit the rinsing away and/or prevent the accumulation of residues and growths. As a result, the defects in the drums and tubs do not permit the Machines to clean themselves after each load. Defects in the door seal also play a role in the accumulation of mold and mildew and moldy odors. Among other things, the door seal does not fully or properly drain and/or remove residues and growths after each wash.

36. GE was aware, or should have known, before marketing and selling the Washing Machines, that they were inherently defective because even when operated as instructed, the machines were substantially likely to experience Mold Problems. GE nonetheless failed to warn or omitted from telling its customers of the Design Defects inherent in the Washing Machines or the Mold Problems that would result from the Design Defects.

37. As a result of the Design Defects that have plagued and continue to plague the Washing Machines, Plaintiff and other Class members overpaid for the Washing Machines. For

the reasons detailed herein, GE knew or should have known that the value of the Washing Machines it was selling to consumers was significantly inflated by its misrepresentations and misleading information concerning those machines. If Plaintiff and other Class members had known about the Design Defects affecting the Washing Machines, they would not have paid the significant sums – often more than \$1,000 per machine – that they paid for the Machines.

38. As a result of the mold and/or mildew odor that permeates items “washed” in the Machines, many consumers have been forced to re-wash or even replace clothes, towels, and other items that have been ruined by the Design Defects in the Washing Machines.

39. GE has profited, either directly or indirectly, by concealing the true nature of the Design Defects and misrepresenting the cause of the Mold Problems associated with the defects, which has enabled it to

- a. sell the Washing Machines at premium prices;
- b. profit on repair services and parts purportedly used to fix the Mold Problems; and
- c. sell Tide Washing Machine-related products, which it misrepresented as capable of addressing and resolving the Mold Problems arising from the Design Defects.

In fact, GE has no effective remedy for the Design Defects and Mold Problems and has taken no action to correct the defects.

40. As a result of GE’s false and misleading statements and concealment, and GE’s other misconduct described in this Complaint, Plaintiff and the Class bought tens of thousands of Washing Machines and have suffered – and continue to suffer – injury as a result of the defective nature of these Washing Machines and as a result of GE’s misconduct.

41. Far from being an innocuous or isolated defect of problem, in addition to Plaintiff, upon information and belief, thousands of other Washing Machine purchasers have complained

directly and indirectly to GE and its authorized dealers and service personnel and on internet websites about the Design Defects and Mold Problems with the Machines.

42. As a result of the avalanche of consumer complaints regarding the defects that GE would not and/or could not remedy, several companies and entrepreneurs created and marketed products designed to treat, eliminate, and/or minimize the Mold Problems caused by the Design Defects in the Washing Machines. These products include, among others, SmellyWasher, NuFreshNow, Affresh, Clorox Washing Machine Cleaner, and Tide Washing Machine Cleaner. Due to the widespread and intractable nature of the Mold Problems, consumers have purchased tens of thousands of units of these products.

43. Reflecting its knowledge that the Design Defects resulted in serious Mold Problems in the Washing Machines, GE sells Tide Washing Machine Cleaner on its website, as shown in the following picture. Despite the representations on GE's website and from other media, Proctor & Gamble's Tide Washing Machine Cleaner fails to prevent and/or fix the Mold Problems experienced by Plaintiffs and other Class members.

Feedback Advanced Search Search Tips

Where to buy | en español | share

Home Products Service & Support Rebates & Promotions Kitchen Design Center Recipes & Communities Explore GE Brands

GEAppliances.com Home > Products > WX10X10011

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## Tide Washing Machine Cleaner

Model #: WX10X10011



Shop the GE Parts Store

**SmartOrder**  
This item is eligible for GE's SmartOrder Subscription Program.

Helps reduce odor-causing residue in any washing machine

Place in detergent dispenser; run machine for one cycle without clothes

To maintain freshness, use one application per month

Three applications per box

Shop the GE Parts Store

<a href="#">Products</a> <a href="#">Rebates &amp; Promotions</a> <a href="#">Parts &amp; Accessories</a> <a href="#">Find a Dealer</a> <a href="#">Mobile</a> <a href="#">GE Brands</a> <a href="#">Employee &amp; Retiree Store</a>	<a href="#">Contact Us</a> <a href="#">Service &amp; Support</a> <a href="#">Product Recalls</a> <a href="#">Site Map</a> <a href="#">Update E-Mail Preferences</a>	<a href="#">Corporate</a> <a href="#">Careers</a> <a href="#">Press Room</a> <a href="#">Privacy Policy</a> <a href="#">Terms of Use</a> <a href="#">Accessibility Statement</a> <a href="#">Our Initiatives</a>
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44. Upon information and belief, GE developed a new line of high-efficiency top-loading washers known as the GE Profile Harmony™ Topload Washer due, in part, to the Design Defects and Mold Problems.

45. Despite having repeated notice of the above-described Design Defects and Mold Problems in the Washing Machines and despite the reasonable expectations of consumers created

by GE's marketing of its Washing Machines, GE has engaged in the following routine, albeit wrongful course of conduct, where GE:

- a. designed, manufactured and sold Washing Machines with Design Defects that cause Mold Problems;
- b. failed to disclose that the Washing Machines had Design Defects that cause Mold Problems;
- c. continued to represent expressly or by implication that the Washing Machines that Plaintiffs and Class members purchased were dependable, cost effective, and would provide outstanding cleaning and performance as washing machines when it knew that these statements were false;
- d. continued to manufacture, market, advertise, distribute, and sell the Washing Machines to consumers when it knew or should have known that the Washing Machines were not dependable and would not withstand normal operation;
- e. failed to disclose to consumers the substantial risk of Washing Machine failure and the material defects in the Washing Machines;
- f. failed to disclose the nature of the Design Defects to consumers;
- g. failed to disclose the many complaints it received from consumers or the high incidence of attempted, but futile, repairs of the Washing Machines;
- h. failed to implement a recall to adequately announce, remedy, and correct the defects for consumers;
- i. failed to disclose to consumers that GE was not committed to making effective repairs under its warranties to address Mold Problems;



- j. failed to take action to correct its omissions or false or misleading express representations about the use, efficacy, qualities, and benefits of its Washing Machines; and
- k. failed to disclose that despite following the recommended procedures within the GE Owner's Manual & Installation Instructions consumers would still experience Mold Problems.

46. By engaging in the foregoing course of conduct, GE has caused consumers – including Plaintiff and the Class – to be aggrieved and suffer ascertainable losses in that, among other things, GE's course of conduct systematically:

- a. caused Plaintiff and the Class members to pay premium prices for a defective product;
- b. reduced the value of the Washing Machines purchased by Plaintiff and the Class; and
- c. caused reasonable consumers like Plaintiff and other Class members to spend time and money for attempted repairs and other purported remedies, such as Washing Machine cleaners, of the defects in their Washing Machines that they would not have spent, but for GE's wrongful conduct.

47. To this day, GE continues to conceal material information from users, consumers, and the public that

- a. the Washing Machines are inherently defective; and
- b. the Washing Machines are not of merchantable quality.

48. Any limitations on remedies contained in GE's express warranties fail of their essential purpose and are unenforceable with respect to the Mold Problems at issue here. When

GE is notified of the Mold Problems, it fails to provide any repairs, replacement of parts, or any other remedy that adequately addresses the Mold Problems. For the same reason, to the extent that there is any notice requirement imposed by law, notice is not required because GE has (and had) actual knowledge of the Mold Problems and notice to it would be futile (in that GE failed to provide an effective remedy).

**PLAINTIFF STANLEY FISHMAN'S EXPERIENCE WITH HIS WASHING MACHINE**

49. Plaintiff purchased a Washing Machine for household purposes on or about November 2006. He paid approximately \$1,000 for the Washing Machine and at all times used the Washing Machine as instructed by GE's manual or otherwise directed by GE. Approximately six months after purchasing his Washing Machine, Plaintiff noticed a foul, mold, or mildew odor emanating from the Washing Machine. Plaintiff attempted a "BasketClean" cycle with bleach, but it failed to correct the Mold Problems.

50. Plaintiff contacted GE so that GE could correct the Mold Problems or instruct Plaintiff so that he may correct the problems.

51. Surprisingly, GE recommended to Plaintiff that he leave his Washing Machine door open between washes to reduce the incidence and affects of the Mold Problem. Not only did this recommendation not solve or prevent the problem, it creates a risk of injury to children and pets and contradicts the instructions for all Washing Machines sold by GE. Specifically, GE warns consumers that they should "not leave the washer door open. An open door could entice children to hang on the door or crawl inside the washer." GE Owner's Manual & Installation Instructions at page 2. Indeed, at least one child, a four-year old girl, has lost her life by climbing into a front load washer that her younger brother turned on. GE has knowledge of the

danger of this recommendation and also realizes that leaving the door open neither corrects the Design Defects nor solves the Mold Problems.

52. Plaintiff's Washing Machine continues to suffer from Mold Problems.

53. GE refused to correct the Mold Problems and instead, provided Plaintiff a check for \$75.00.

### **FRAUDULENT CONCEALMENT**

54. The statute of limitations has been tolled by GE's knowing and active concealment of the fact that the Washing Machines cause Mold Problems. GE kept Plaintiff ignorant of vital information essential to the pursuit of his claim, without any fault or lack of diligence on the part of Plaintiff. Plaintiff could not have reasonably discovered the fact that his Washing Machine would experience Mold Problems due to the Design Defects.

55. GE was and is under a continuous duty to disclose to Plaintiff the true character, quality, and nature of the Washing Machines. At all relevant times, and continuing to this day, GE knowingly, affirmatively, and actively misrepresented and concealed the true character, quality, and nature of the Washing Machines. Plaintiff reasonably relied upon GE's affirmative misrepresentations and knowing, affirmative, and/or active concealment. Based on the foregoing, GE is estopped from relying on any statutes of limitation in defense of this action.

### **CLASS ACTION ALLEGATIONS**

#### **A. Definition of the Class**

56. Plaintiff brings this action on behalf of himself and all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.

57. The Classes, of which Plaintiff is a member, that Plaintiff seeks to represent are defined as follows:

**Class A:**

All persons who own a Washing Machine for personal, family, or household purposes, and not for resale, in the United States.

**Class B (New Jersey Sub-Class):**

All persons who own a Washing Machine for personal, family, or household purposes, and not for resale, in New Jersey.

Excluded from the Classes are GE, its affiliates, employees, officers and directors, persons or entities that distribute or sell the Washing Machines, the Judges assigned to this case, and the attorneys of record in this case. Plaintiff reserves the right to amend the Class definitions if discovery or further investigation reveals that the Classes should be expanded or otherwise modified.

**B. Numerosity**

58. The members of the Classes are so numerous that joinder of all members would be impracticable. GE has sold thousands of Washing Machines throughout the nation. While the precise numbers of members are unknown to Plaintiffs, that information can be ascertained through discovery.

**C. Commonality**

59. There are common questions of law and fact that predominate over any questions affecting only individual members of each Class. Those common legal and factual questions, include, but are not limited to the following:

- a. Whether GE Washing Machines contain a common design defect that results in mold or mildew from normal use;

- b. Whether GE knew or should have known that the Washing Machines are not dependable and/or not suitable for use as home washing machines;
- c. Whether GE concealed from and/or failed to disclose to Plaintiff and putative Class material facts;
- d. Whether GE engaged in unfair or deceptive acts and/or practices when it failed or omitted to disclose the unreliability of, and/or design defect inherent in, GE Washing Machines;
- e. Whether GE's actions violated the New Jersey Consumer Fraud Act;
- f. Whether GE is/was unjustly enriched; and
- g. Whether Plaintiff and the Class have been damaged, and if so, what is the proper measure of such damages?

**D. Typicality**

60. Plaintiff has the same interests in this matter as all other members of the Class. Plaintiff and all Class members have been injured by the same wrongful practices of GE.

61. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of all Class members and are based on the same legal theories.

**E. Adequacy**

62. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Neither Plaintiff nor his counsel have any interests contrary to or conflicting with the Classes.

**F. The Prerequisites of Rule 23(b)(2) are Satisfied**

63. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Rule 23(b)(2) exist as Defendant has acted or refused to act on grounds generally



applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

64. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of Class members, who would not be parties to those actions.

65. Defendant's actions are generally applicable to the Class as a whole, and Plaintiff seek, *inter alia*, equitable remedies with respect to the Class as a whole.

66. Defendant's systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

**G. The Prerequisites of Rule 23(b)(3) are Satisfied**

67. This case satisfies the prerequisites of Rule 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member.

68. Plaintiff does not anticipate any difficulty in the management of this litigation.

69. GE has, or has access to, address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

70. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class defined above.

### COUNT I

#### **(Violation of New Jersey Consumer Fraud Act)**

71. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

72. At all times relevant hereto there was in full force and effect the New Jersey Consumer Fraud Act (NJCFA), N.J.S.A. 56:8-1 *et seq.*, which was enacted and designed to protect consumers against unfair, deceptive, or fraudulent business practices.

73. N.J.S.A. 56:8-2 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact...whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

74. At all relevant times, Plaintiff, Class members and GE were "persons" within the meaning of N.J.S.A. 56:8-1.

75. The Washing Machines sold by GE are merchandise within the meaning of the NJCFA, and Plaintiff and Class members are consumers within the meaning of the NJCFA and entitled to the statutory remedies made available in the NJCFA.

76. GE has violated the NJCFA through the sale of its Washing Machines, *inter alia*, by selling said machines with the Design Defects that cause the Mold Problems and failing to

disclose and/or concealing the Design Defects and Mold Problems from Plaintiff and Class members.

77. GE intended that Plaintiff and the Class would, in the absence of disclosure and due to its misrepresentations and omissions, purchase Washing Machines while unaware of the Design Defects and Mold Problems described above. This conduct constitutes consumer fraud within the meaning of the NJCFA.

78. GE's conduct constitutes unlawful, unfair and deceptive business practices within the meaning of the NJCFA.

79. Defendant's conduct has proximately caused damage to Plaintiff and Class members to suffer an ascertainable loss in an amount to be proven at trial.

## **COUNT II**

### **(Breach of Express Warranty)**

80. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

81. GE made affirmations of fact and promises to Plaintiff and members of the Classes that related to the Washing Machines as more fully described herein.

82. GE's affirmations of fact and promises became part of the basis of the bargain between the parties.

83. These affirmations of fact and promises created an express warranty that the Washing Machines would conform to GE's affirmations and promises.

84. GE uniformly warranted all of the Washing Machines against defects in material or workmanship at a time when it knew that the Washing Machines suffered from serious defects

and, nevertheless, continued to market and sell the Washing Machines with this express warranty.

85. GE is obligated under the terms of its written warranty to repair and/or replace the defective Washing Machines sold to Plaintiff and members of the Class.

86. GE has breached its written warranty, as set forth above, by supplying the Washing Machines in a condition that does not meet the warranty and obligations undertaken by GE and by failing to repair or replace the defects and/or defective parts.

87. As set forth above, GE's warranty fails in its essential purpose and, accordingly, Plaintiff and members of the Classes cannot and should not be limited to the remedies set forth in GE's written warranty and, instead, should be permitted to recover all measure of appropriate relief.

88. GE has received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and GE's knowledge of the defects in the Washing Machines. GE has failed and refused to honor its warranty, even though it knows of the defects inherent in the Washing Machines.

89. Plaintiff and members of the Classes have given GE a reasonable opportunity to cure its failures with respect to its warranty, and GE has failed to do so.

90. GE has failed to provide Plaintiff and members of the Classes, as a warranty repair and/or replacement, a product that conforms to the qualities and characteristics that GE expressly warranted when it sold the Washing Machines to Plaintiff and members of the Classes.

91. As a result of GE's breach of express warranty, Plaintiff and members of the Classes have suffered damages in an amount to be determined at trial.

### **COUNT III**

**(Breach of Implied Warranty of Merchantability)**

92. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

93. GE is a merchant in the sale of the Washing Machines to Plaintiff and the members of the Classes and the Washing Machines are goods under applicable law.

94. Plaintiff and members of the Classes are in privity with GE in that they purchased their Washing Machines directly from GE or from an actual or apparent agent of GE such as its authorized dealers.

95. Plaintiff and members of the Classes are also in privity with GE by virtue of the contractual relationship stemming from GE's manufacturer's warranty provided in conjunction with the purchase of the Washing Machines, which is enforceable by Plaintiff and the members of the Classes as against GE regardless of where, or from whom, the Washing Machines were acquired.

96. GE, as the manufacturer and seller of the Washing Machines, was obligated to make certain that the Washing Machines were reasonably fit for the purposes for which such products are used, and that the Washing Machines are acceptable in trade for the product description.

97. Notwithstanding the aforementioned duty, at the time of delivery, the Washing Machines sold to Plaintiff and the Class were not merchantable.

98. As documented in its own business records and elsewhere, Defendant was aware, or should have known, that that the Washing Machines were not merchantable within a reasonable time after the latent defect manifested itself to Plaintiff and the Class.



99. As a result of the Design Defects, Mold Problems and overall non-merchantability of the Washing Machines described herein, Plaintiff and other members of the Class have sustained damages in an amount to be determined at trial.

#### **COUNT IV**

##### **(Unjust Enrichment)**

100. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

101. This claim is asserted in the alternative on behalf of Plaintiff and the members of the Classes to the extent that the warranties do not govern all of Plaintiff's and Class members' claims or there is any determination that Plaintiff does not have standing to assert any contractual claims against GE because of any alleged absence of contractual privity or otherwise.

102. Defendant received and retained a benefit conferred by Plaintiff and Class members at their expense through the purchase of GE Washing Machines.

103. GE has benefitted unjustly at Plaintiff's and Class members' expense.

104. It would be inequitable and unjust for GE to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the Washing Machines.

105. Plaintiffs and Class members have no adequate remedy at law because of GE's conduct.

106. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class members have suffered non-monetary and monetary injury.

107. Plaintiff and the members of the Classes seek restitution from GE and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by GE

from its wrongful conduct and establishment of a constructive trust from which Plaintiff and members of the Classes may seek restitution.

WHEREFORE, Plaintiff, individually and on behalf of the Classes described herein, pray for judgment against GE as follows:

- A. For an Order certifying the Classes under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), appointing Plaintiff as Class representative, and appointing the lawyers and law firms representing Plaintiff as Class Counsel.;
- B. Entering judgment in favor of Plaintiff and the members of the Class and against Defendant;
- C. For all recoverable compensatory, statutory, and other damages sustained by Plaintiff and the Classes;
- D. For both pre-judgment and post-judgment interest on any amounts awarded;
- E. For appropriate injunctive relief;
- F. For payment of attorneys' fees and costs; and
- H. For such other and further relief as the Court deems proper.

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO, P.C.  
Attorneys for Plaintiffs

By: /s/ James E. Cecchi  
JAMES E. CECCHI

Dated: January 31, 2012

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all claims so triable.

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO, P.C.  
Attorneys for Plaintiffs

By: /s/ James E. Cecchi  
JAMES E. CECCHI

Dated: January 31, 2012

# EXHIBIT I

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

DAISY MONTICH, individually and on  
behalf of all others similarly situated,

Plaintiff

v.

MIELE USA, INC.,

Defendant.

Civil Action No. 11-2725(FLW)(DEA)

**AMENDED CLASS ACTION  
COMPLAINT AND DEMAND  
FOR JURY TRIAL**

Plaintiff Daisy Montich, individually and on behalf of all others similarly situated, complains against defendant Miele USA. ("Miele" or "Defendant"), upon personal knowledge as to herself and own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by her attorneys, as follows:

**OVERVIEW OF THE ACTION**

1. This is a proposed class action brought by Plaintiff individually and on behalf of a proposed Class of consumers of Miele front load washing machines (collectively, "Machines" or



“Miele Washing Machines”), as defined more fully herein, which were purchased by Plaintiff and the putative class.

2. This action arises from the sale of Miele Washing Machines that Miele knew or should have known contained a design flaw and/or defect, which results in the Machines exhibiting mold and/or mildew under normal use.

3. Miele’s conduct gives rise to Plaintiff’s claims for violation of state consumer protection laws, breach of implied warranty, and unjust enrichment.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). This is a class action involving more than 100 class members. At least one member of the Class is a citizen of a State different from defendant, and the amount in controversy, in the aggregate, exceeds the sum of \$5,000,000.00 exclusive of interest and costs.

5. Venue is proper under 28 U.S.C. § 1391. Defendant conducts substantial business in this District. Defendant is headquartered in New Jersey, transacts business in New Jersey and committed illegal acts in, maintains agents or representatives in, and is otherwise found in this District. Defendant regularly and continuously conducts business in interstate commerce that is carried out in part in this District.

#### **PARTIES**

6. Plaintiff Daisy Montich is a citizen of California, and resides in Torrance, California. On or about July 27, 2007, Plaintiff purchased a Miele Washing Machine from a Ferguson Enterprises, Inc. store in California and took delivery of the Machine on or about September 25, 2007. Within one year of delivery, Plaintiff began to experience mold, mildew

and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Washing Machine.

7. Defendant Miele USA, Inc. is a Delaware corporation with its principal place of business at 9 Independence Way, Princeton, New Jersey 08540. Miele manufactures thousands of washing machines each year, a substantial portion of which are sold or offered for sale in New Jersey. Miele has sold, either directly or indirectly, thousands of its defective Washing Machines nationwide and in the State of New Jersey.

### **FACTS**

#### **Miele Washing Machines**

8. Defendant marketed and sold a line of front-loading washers, the Miele Washing Machines, throughout the United States. The machines are used primarily for consumer and household purposes. Miele sold the machines as part of its trade or business.

9. Defendant marketed Miele Washing Machines as a product that saved energy and water while providing outstanding cleaning and dependability, and consumers paid a premium for the machines, which were priced at the top of the washing machine market. Consumers often paid in excess of \$1,700.00 for a Machine.

10. Defendant provided an express warranty with Machines that guaranteed, for the first year from the date of purchase, free replacement of parts without labor charge.

11. The Machines contain a common design defect that causes them to develop mold and/or mildew with normal use. On information and belief, the Machine suffers from a common design defect that prevents proper water drainage failure, particularly at the door seal, which design defect manifests itself by exhibiting mold and/or mildew. Consequently, the Machines otherwise do not perform as durable and dependable washing machines.

12. The Machines as designed do not perform in accordance with the reasonable expectations of Plaintiff and Class members.

13. On information and belief, Defendant has received a significant number of complaints regarding performance of the Machines, and in particular, problems regarding mold and mildew.

14. The inability of the Miele Washing Machines to properly drain, especially the door seal, is due to a common design defect. Miele knew, or should have known, of the design defect at the time it sold the Machines.

15. The development of mold and mildew in a washing machine is a material fact that any consumer would consider in selecting a machine for purchase as are the economic benefits of dependability, durability and efficiency/conservation when paying a premium price for a top-tier machine, like those manufactured and sold by Miele.

16. At no time has Miele disclosed the design defect to purchasers of Miele washing machine or to the general public, who would not otherwise know of the defect. On information and belief, Miele actively concealed the existence of the defect, even when purchasers began contacting Miele about the development of mold and mildew in their machines.

17. As a result of Defendant's failures and misconduct as detailed herein, Plaintiff and the proposed Class members have been damaged.

**Named Plaintiff's Facts**

18. On or about July 27, 2007, Plaintiff purchased a Miele Washing Machine for approximately \$1,799. Plaintiff used the washer for normal home use.

19. Plaintiff was unaware of the defect in the Miele Washing Machine before her purchase. Rather, given marketing and other materials about the Miele washing machines she

had read and to which she had been exposed prior to her purchase of a Miele washing machine, she expected to purchase a washing machine that saved energy and water while providing outstanding cleaning and dependability, including a long useful life. Such qualities were material to and played a substantial part in her decision to purchase a Miele washing machine. Indeed, she paid more for the Miele washing machine expecting that it would meet such expectations, and was unaware of the defect which Miele omitted from these materials and concealed from the public.

20. Starting around the summer of 2008, Plaintiff began experiencing problems with her Miele Washing Machine, specifically the machine began to have a mildew/mold odor. Additionally, her laundry had a mildew odor on it after being washed in the Miele Washing Machine.

21. Plaintiff regularly leaves the door open on her Washing Machine.

22. Plaintiff contacted Defendant about this problem, but Defendant continued its active concealment of the defect in its machines. Defendant sent her a Descaler to run in the machine on an empty cycle to allegedly remediate the mold/mildew problem. Plaintiff continues to have a mold/mildew odor issue even after use of the Descaler.

23. If Plaintiff had known about the defect in the Miele Washing Machine (which Miele actively concealed) when she was shopping for a washing machine, she would not have purchased a Miele and certainly would not have paid the premium price that she did for the Miele Washing Machine.

**CLASS ACTION ALLEGATIONS**

**A. Definition of the Class**

24. Plaintiff brings all claims herein as class claims pursuant to Fed. R. Civ. P. 23.

The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to the classes defined below, of which Plaintiff is a member:

Class A:

All persons and entities who own a Miele Washing Machine

Class B (Multi-State Sub-Class):

All persons and entities in New Jersey, California, Florida, Illinois, Maryland, Michigan, Minnesota, Missouri, New York, Wisconsin and Washington who own a Miele Washing Machine

25. The class/es (collectively, "class") may be modified pending discovery. Excluded from the Class are members of the judiciary, Defendants, any entity in which they have a controlling interest, and their officers and directors and the members of their immediate families.

**B. Numerosity**

26. At this time, Plaintiff does not know the exact size of the Class; however, due to the nature of the trade and commerce involved, Plaintiff believes that the Class members are so numerous that joinder of all members is impracticable. The number of Class members can be determined through appropriate discovery.

**C. Commonality**

27. There are questions of law or fact common to the Class, including at least the following:

- (a) Whether Miele Washing Machines contain a common design defect that results in mold or mildew from normal use;



- (b) Whether Defendant knew or should have known that Miele Washing Machines are not dependable and/or not suitable for use as home washing machines;
- (c) Whether Defendant concealed from and/or failed to disclose to Plaintiff and putative Class material facts;
- (d) Whether Defendant engaged in unfair or deceptive acts and/or practices when it failed or omitted to disclose the unreliability of, and/or design defect inherent in, Miele Washing Machines;
- (e) Whether Defendant's actions violated the New Jersey Consumer Protection Act, and/or consumer protection laws of various states;
- (f) Whether Defendant is/was unjustly enriched;
- (g) Whether Declaratory Relief is appropriate; and
- (h) Whether Plaintiff and the Class have been damaged, and if so, what is the proper measure of such damages?

**D. Typicality**

28. Plaintiff has the same interests in this matter as all other members of the Class, and her claim is typical of all members of the Class.

**E. Adequacy**

29. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Plaintiff will fairly and adequately represent the interests of the Class members and do not have interests adverse to the Class.

**F. The Prerequisites of Rule 23(b)(2) are Satisfied**

30. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendant has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

31. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of Class members, who would not be parties to those actions.

32. Defendant's actions are generally applicable to the Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.

33. Defendant's systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

**G. The Prerequisites of Rule 23(b)(3) are Satisfied**

34. This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class defined above.

**COUNT I**

**Brought on Behalf of Class B**

**(Cal. Bus. & Prof. Code § 17200 *et seq.* and substantially similar consumer protection laws<sup>1</sup>)**

35. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

36. Defendant has engaged in unfair, unlawful, and fraudulent business acts or practices as set forth above.

37. Defendant's conduct constitutes unfair business acts and/or practices because Defendant's actions have caused and are likely to cause substantial injury to Plaintiff and other purchasers of its washing machines, which injury is not reasonably avoidable by Plaintiff and other purchasers in light of Defendant's exclusive knowledge of the defect in the Washing Machines, and is not outweighed by the acts' and practices' benefits, if any, to Plaintiff and other purchasers.

38. Such conduct is ongoing and continues to this date.

39. Defendant's acts and practices of selling washing machines while omitting and concealing the material fact that these machines have a high propensity to develop mold and/or mildew in the usual course of regular use offends an established public policy or are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. Furthermore, these acts and practices threaten an incipient violation of consumer protection statutes or violate the policy and spirit of such laws because the effect of the acts and practices are comparable to or the same as a violation of the law or otherwise significantly threaten or harm competition.

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<sup>1</sup> See e.g., Fla. Stat. Ann. § 501.201 *et seq.* (Florida); 815 ILCS § 505/1 *et seq.* (Illinois); Md. Code Ann., Com. Law § 13-101 *et seq.* (Maryland); Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); Minn. Stat. § 8.31 *et seq.* (Minnesota); Mo. Rev. Stat. § 407.010 *et seq.* (Missouri); N.J.S.A. 56:8-1 *et seq.* (New Jersey); N.Y. Gen. Bus. Law. § 349 *et seq.* (New York); Wash. Rev. Code § 19.86.010 *et seq.* (Washington); Wis. Stat. § 100.18 *et seq.* (Wisconsin).

40. Defendant's omissions and misrepresentations are anticompetitive because consumers are lured into buying Defendant's washing machines when, had they been made aware of the true facts, they would have bought a different machine, such as a traditional or high-efficiency top loading washing machine or other alternatives.

41. Defendant's acts and practices are unlawful because they violated California Civ. Code. §§ 1668, 1709, 1710, and 1711. Defendant's acts and practices are also unlawful because they violated the Cal. Comm. Code § 2313, Bus. & Prof. Code § 17500, and the common law as alleged throughout this complaint in the claims for relief that follow.

- i. Defendant violated Civ. Code § 1668 by attempting to exempt itself from liability for selling defective washers and by unlawfully limiting the warranty period of the washers it knows to be defective.
- ii. Defendant violates Civ. Code §§ 1709, 1710, and 1711 by not disclosing to the public the material fact that the washing machines have a high propensity to develop mold and/or mildew. Defendant knowingly or recklessly conceals this fact. Plaintiff and other purchasers were not aware of this fact and would not have purchased the Miele Washing Machines had they known of the defect. As a result, Plaintiff and other purchasers lost money by overpaying for the Miele Washing Machines.

42. Defendant's acts and practices are fraudulent in that they have deceived and/or are likely to deceive Plaintiffs and other purchasers. Defendant knowingly sold Plaintiff and others washing machines essentially unusable for the purposes for which they were purchased.

43. Plaintiff and other purchasers relied upon Defendant's unfair, unlawful, and fraudulent business acts and practices – the material misrepresentations, omissions, and non-

disclosures – to their detriment in that they would not have purchased the washers had they known the true facts.

44. Plaintiff and other purchasers have suffered injury in fact and have lost money as a result of Defendant's unfair competition in that they have overpaid for the Miele Washing Machines, incurred expenses in attempting to repair these machines or remedy the mold and/or mildew, and/or would not have purchased a Miele Washing Machine had Defendant not misrepresented and omitted disclosing the fact that these machines have a propensity to develop mold and/or mildew.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Imposing a constructive trust on amounts wrongfully collected from Plaintiff and the Class members pending resolution of their claims herein;
- F. Compelling Defendant to establish a program to inspect, repair and replace defective Miele Washing Machines;
- G. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Miele customers who have had to pay to repair and/or replace defective Miele Washing Machines, reimburse customers who have purchased extended warranties; and
- H. Granting such further relief as the Court deems just.



**COUNT II**  
**Brought on Behalf of Class B**  
**(Violation of Cal. Bus. & Prof. Code § 17500 *et seq.* and substantially similar consumer protection laws<sup>2</sup>)**

45. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

46. Defendant is a “person” as defined by Cal. Bus. & Prof. Code § 17506.

47. Defendant falsely advertised the performance, uses, benefits, characteristics, quality, grade and standard of its washing machines by, *inter alia*, representing that these machines were “washers” or “washing machines” as that term and phrase are normally understood, and by otherwise representing that the washing machines were machines that saved energy and water while providing outstanding cleaning and dependability.

48. Defendant also falsely advertised by failing to disclose (and actively concealed) the defect and the material fact that its machines would accumulate mold and/or mildew through regular operation and normal use.

49. These and other representations and omissions did deceive and are likely to deceive Plaintiff and other consumers.

50. Plaintiff and other consumers relied upon these material misrepresentations and omissions to their detriment in that they would not have purchased the washers had they known the true facts.

51. The false and misleading advertising conducted by Defendant continues to this day and presents a threat to the general public in that Defendant has not acknowledged its wrongdoing to consumers or publicly issued an appropriate conspicuous notice to existing or prospective purchasers of its washing machines.

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<sup>2</sup> See note 1.

52. As a result of the above, Defendant has been, and will continue to be, unjustly enriched at the expense of Plaintiff and other consumers.

53. Defendant's conduct has proximately caused damage to Plaintiff and Class members in an amount to be proven at trial.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Imposing a constructive trust on amounts wrongfully collected from Plaintiff and the Class members pending resolution of their claims herein;
- F. Compelling Defendant to establish a program to inspect, repair and replace defective Miele Washing Machines;
- G. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Miele customers who have had to pay to repair and/or replace defective Miele Washing Machines, reimburse customers who have purchased extended warranties; and
- H. Granting such further relief as the Court deems just.

**COUNT III**

**Brought on Behalf of Class A, or Alternatively, Class B  
(Breach of Implied Warranty of Merchantability)**

54. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

55. At all times relevant hereto, there was duty imposed by law which requires that a manufacturer or seller's product be reasonably fit for the purposes for which such products are used, and that product be acceptable in trade for the product description.

56. Notwithstanding the aforementioned duty, at the time of delivery, Miele Washing Machines sold to Plaintiff and the Class were not merchantable.

57. As documented in its own business records and elsewhere, Defendant was notified that the Miele Washing Machines were not merchantable with a reasonable time after the latent defect manifested itself to Plaintiff and the Class.

58. As a result of the non-merchantability of the Miele Washing Machines described herein, Plaintiff and other members of the Class sustained a loss or damages.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Imposing a constructive trust on amounts wrongfully collected from Plaintiff and the Class members pending resolution of their claims herein;
- F. Compelling Defendant to establish a program to inspect, repair and replace defective Miele Washing Machines;
- G. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Miele customers who have had to pay to repair and/or replace defective Miele Washing Machines, reimburse customers who have purchased extended warranties; and

H. Granting such further relief as the Court deems just.

**COUNT IV**  
**Brought on Behalf of Class A**  
**(Unjust Enrichment (Alternative Count))**

59. Plaintiff repeats the allegations contained in the prior paragraphs, as if fully set forth herein.

60. Defendant received and retained a benefit conferred by Plaintiff and Class Members at their expense through the purchase of Miele Washing Machines.

61. As hereinabove alleged, Miele has benefited unjustly at Plaintiff's and Class Members' expense, which in equity and good conscience, Miele should not be permitted to retain.

62. Plaintiffs and Class Members have no adequate remedy at law because of Miele's conduct.

63. Under the circumstances, where Defendant has reaped these benefits by misleading the Class as to the fitness of the washing machines and failing to disclose that there was a substantial risk of mold or mildew that far exceeded the risk of such defect normally associated with similar consumer products; and that mold or mildew was not covered under the warranty, it is inequitable for Defendant to retain these benefits at the expense of Plaintiff and the Class.

64. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class members have suffered non-monetary and monetary injury.

65. Plaintiff seeks to obtain a pecuniary benefit for the Class in the form of all reimbursement, restitution and disgorgement from Defendant.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Imposing a constructive trust on amounts wrongfully collected from Plaintiff and the Class members pending resolution of their claims herein;
- F. Compelling Defendant to establish a program to inspect, repair and replace defective Miele Washing Machines;
- G. Compelling Defendant to establish a program to reimburse its warranty claims denied or paid in part, reimburse Miele customers who have had to pay to repair and/or replace defective Miele Washing Machines, reimburse customers who have purchased extended warranties; and
- H. Granting such further relief as the Court deems just.

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Dated: April 16, 2012

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**DEMAND FOR JURY TRIAL**

The undersigned hereby demands a trial by jury as to all claims so triable.

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO, P.C  
Attorneys for Plaintiffs

By: /s/ James E. Cecchi  
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Dated: April 16, 2012

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# EXHIBIT J

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**DOCUMENT ELECTRONICALLY FILED**

**Counsel for Plaintiffs and the Class**

**(Additional Counsel appear on the signature page)**

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE LG FRONT LOAD WASHING :  
MACHINE CLASS ACTION : Case No. 2:08-cv-00051-FSH-MAS  
LITIGATION :  
\_\_\_\_\_ :**

**CONSOLIDATED AMENDED COMPLAINT**

Plaintiffs, Ralph Ashe ("Ashe"), Lyla Boone ("Boone"), Jill Burke ("Burke"), Mark Cook ("Cook"), Paula Cook-Sommer ("Sommer"), Richard Demski ("Demski"), Marcia Figueroa ("Figueroa"), Mike Franko ("Franko"), Glenn and Lori Grosso ("Grosso"), Cheryl Harder ("Harder"), Jason and Gina Harper ("Harper"), Cristen Irving ("Irving"), Cindy Launch ("Launch"), Edward Manzello ("Manzello"), James and Wendy McClure ("McClure"), Jill Olejniczak ("Olejniczak"), Kim Scalise ("Scalise"), Ann Trethewey ("Trethewey"), Nancy Vanasse ("Vanasse"), and Jonathan and Carolyn Zimmerman ("Zimmerman") by and through

their undersigned counsel, on behalf of themselves and all other persons and entities similarly situated, allege the following facts and claims upon knowledge as to matters relating to themselves and upon information and belief as to all other matters and, by way of this Consolidated Amended Complaint ("Complaint"), aver as follows:

### INTRODUCTION

1. Plaintiffs bring this class action on behalf of themselves and all others similarly situated against Defendant, LG Electronics USA, Inc. ("Defendant" or "LG"), seeking damages and injunctive relief for the proposed Classes as defined herein.

2. This action is brought to remedy violations of applicable law in connection with Defendant's design, manufacture, sale and servicing of its Front-Loading Automatic Washers (the "Washing Machines" or "Machines"). The Machines have inherent design defects that cause them to (a) accumulate mold, mildew or similar residue within the Washing Machines; (b) produce foul and noxious odor that escapes from the Washing Machines; (c) produce mold, mildew and/or foul odor on clothes washed in the Machines; and (d) be unusable for the ordinary purpose which the Washing Machines were sold.

3. Plaintiffs assert claims on behalf of themselves and a nationwide class under the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.* ("CFA") or, in the alternative, state law claims under other similar consumer protection statutes of other states. Plaintiffs also assert claims on behalf of themselves and a nationwide class for violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.* ("Magnuson-Moss Act"), and claims on behalf of themselves and a nationwide class for breach of express and implied warranty and unjust enrichment under New Jersey law, and, in the alternative, under the laws of the states of



purchase.

### THE PARTIES

#### PLAINTIFFS

4. Plaintiff Ashe is a citizen of New Jersey, and resides in Thorofare, New Jersey.

On or about October 23, 2005, Plaintiff purchased a LG Washing Machine from a Home Depot store in New Jersey and took delivery of the Machine on or about October 30, 2005. Within one year of delivery, Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Washing Machine.

5. Plaintiff Boone is a citizen of California and resides in Redding, California. In or about December 2005, Plaintiff purchased a LG Washing Machine in California and took delivery of the Machine on or about January 2, 2006. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine after only seven months of use. Plaintiff promptly contacted LG concerning the problem with the mold, mildew and/or foul odors in her Machine.

6. Plaintiff Burke is a citizen of New York and resides in Manorville, New York. Plaintiff purchased a LG Washing Machine in New York in May 2005. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine) within approximately one year of purchase. In approximately July 2006, the Machine produced mold, mildew and/or foul odors on a regular basis. Plaintiff arranged for the repair of her Washing Machine pursuant to her extended warranty in February 2007. The repair person was unable to fix the Machine so that the mold, mildew and/or foul odors would not return.

7. Plaintiff Cook is a citizen of Colorado and resides in Littleton, Colorado. Plaintiff purchased an LG Washing Machine in Colorado in November 2007. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine after only about five washes. Plaintiff promptly contacted LG, and notified LG again on at least three occasions concerning the problem with the mold, mildew and/or foul odors in his Machine. An LG representative also came to Plaintiff's home in response to his complaints with his Machine.

8. Plaintiff Cook-Sommer is a citizen of Colorado and resides in Golden, Colorado. Plaintiff purchased an LG Washing Machine in Colorado in July 2006. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine after only six months of use. Plaintiff promptly contacted Home Depot concerning the problem with the mold, mildew and/or foul odors in her Machine.

9. Plaintiff Demski is a citizen of Florida and resides in Bradenton, Florida. On or about August 19, 2006, while residing in Wisconsin, Plaintiff purchased a LG Washing Machine in Wisconsin and took delivery of the Machine on or about September 2, 2006. Within two months of delivery and while residing in Wisconsin, Plaintiff began to experience mold, mildew and/or foul odors accumulation in the Washing Machine and on clothes and other items washed in the Machine. Plaintiff contacted LG concerning the problem with the mold, mildew and/or foul odors in his Machine in March 2007.

10. Plaintiff Figueroa is a citizen of New York and resides in New York. In or about February 2005, Plaintiff purchased an LG Washing Machine in New York. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes

and other items washed in the Machine no later than approximately eight months after she purchased the Machine. Plaintiff contacted LG concerning the mold, mildew and/or foul odors in her Machine in or about April 2006.

11. Plaintiff Franko is citizen of Ohio and resides in Broadview Heights, Ohio. In or about June 2006, Plaintiff purchased an LG Washing Machine from a Home Depot in Ohio. Shortly after purchasing the Machine, Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine. Plaintiff promptly contacted Home Depot concerning the mold, mildew and/or foul odors in the Machine.

12. Plaintiffs Grosso are citizens of Michigan and reside in Grosse Pointe Woods, Michigan. On or about July 19, 2006, Plaintiffs purchased an LG Washing Machine from Best Buy in Michigan and took delivery of the Machine on July 22, 2006. Plaintiffs began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine after several months of use of the Machine. Plaintiffs promptly notified Best Buy about the mold, mildew and/or foul odors in the Machine.

13. Plaintiff Harder is a citizen of Ohio and resides in Batavia, Ohio. On May 6, 2007, Plaintiff purchased a LG Washing Machine from a Best Buy store in Ohio, and took delivery of the Machine shortly thereafter. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items she had put through the Machine within two months of delivery. Plaintiff contacted LG several times in late Summer/early Fall 2007 concerning the problem with the mold, mildew and/or foul odors in her Machine.

14. Plaintiffs Harper are citizens of Florida and reside in Sarasota, Florida. On or about April 25, 2006, Plaintiffs purchased an LG Washing Machine in Florida and took delivery on May 20, 2006. Plaintiffs began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine within one month of using the Machine. Plaintiffs contacted LG concerning the mold, mildew and/or foul odor problem. In response, LG sent out a repairperson, who was unable to resolve the problem. Plaintiffs subsequently called LG again to complain and left a voicemail message, to which they never received a response.

15. Plaintiff Irving is a citizen of Connecticut and resides in Ridgefield, Connecticut. On or about July 23, 2006, Plaintiff purchased an LG Washing Machine at a Home Depot store in Connecticut and took delivery of the Machine within a few days. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine within a few months of delivery. Plaintiff promptly contacted LG several times concerning the problem with the mold, mildew and/or foul odors in the Machine.

16. Plaintiff Launch is a citizen of Florida and resides in Santa Rosa Beach, Florida. On or about June 29, 2006, Plaintiff purchased an LG Washing Machine in Florida and took delivery of the Machine on or about July 1, 2006. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine after several months of use of the Machine. On or about January 25, 2008, Plaintiff wrote to LG advising LG of her problems concerning the mold, mildew and/or foul odors in her Machine. The next day, Plaintiff called LG concerning the problems with her Washing Machine.

17. Plaintiff Manzello is a citizen of New York and resides in Shoreham, New York. In or about October 2006, Plaintiff purchased an LG Washing Machine in New York. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine almost immediately after using the Machine. Plaintiff called the LG service line about the mold, mildew and/or odor problems almost immediately after purchasing the Machine.

18. Plaintiffs McClure are citizens of Texas and reside in Cypress, Texas. In or about August 2006, Plaintiffs purchased an LG Washing Machine in Texas. Plaintiffs began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine within four to six months. Plaintiffs contacted LG on several occasions concerning the mold, mildew and/or foul odor problem in the Machine.

19. Plaintiff Olejniczak is a citizen of Texas and resides in Fulshear, Texas. In or about January 2006, Plaintiff purchased an LG Washing Machine in Texas and took delivery of the Machine on January 25, 2006. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine after approximately three to four months of use of the Machine. Plaintiff contacted LG on several occasions concerning the mold, mildew and/or foul odor problems.

20. Plaintiff Scalise is a citizen of Illinois and resides in Huntley, Illinois. In or about June 2005, Plaintiff purchased an LG Washing Machine in Illinois. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine within a year of using the Machine. Plaintiff promptly contacted LG concerning the mold, mildew and/or foul odors in her Machine.



21. Plaintiff Trethewey is a citizen of Pennsylvania and resides in Downingtown, Pennsylvania. On or about October 6, 2007, Plaintiff purchased an LG Washing Machine at a Home Depot store in Pennsylvania, and took delivery of the Machine within approximately two weeks. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine within five months of delivery. Plaintiff promptly complained to LG concerning the mold, mildew and/or foul odors in her Machine.

22. Plaintiff Vanasse is a citizen of Massachusetts and resides in Clinton, Massachusetts. In or about February 2006, Plaintiff purchased an LG Washing Machine in Massachusetts. Plaintiff began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine after about two months of using the Machine. Plaintiff promptly contacted LG on at least four occasions concerning the mold, mildew and/or foul odor problem in the Machine.

23. Plaintiffs Zimmerman are citizens of North Carolina and reside in Hickory, North Carolina. In or about December 2006, Plaintiffs purchased an LG Washing Machine in North Carolina. On or around March 2007, Plaintiffs began to experience mold, mildew and/or foul odor accumulation in the Washing Machine and on clothes and other items washed in the Machine. Plaintiffs contacted LG concerning the mold, mildew and/or foul odor problem in the Machine. LG put in service orders for three separate companies, only two of which showed up and the third stated that it had "stopped selling and fixing LG machines because there were so many problems." When the service visits failed to stop the mold, mildew and/or foul odors, Plaintiffs called LG several times and left messages about the problems. LG, however, never

returned their calls. In January 2008, Plaintiffs finally succeeded in contacting LG, only to be told that the warranty had expired, and LG would not fix the Machine.

24. Each of the Plaintiffs named above purchased a LG Washing Machine and used it for its intended purpose, and in a manner consistent with its intended use. At the time of the Plaintiffs' purchases, LG failed to disclose that the Washing Machines were defective, as evidenced by the fact that Plaintiffs experienced and continue to experience mold, mildew and/or foul odors in their Machines and on clothing and other items washed in their Machines.

25. In response to the various notices from the Plaintiffs to LG regarding the defects in their Washing Machines and the mold, mildew and/or foul odor problems, LG personnel, LG's retailers, and LG's repairmen made form or "canned" responses. For example, LG proposed, *inter alia*: running double rinse cycles with each load; wiping down the gasket, door and inside of the Washing Machines after each use; wiping the inside of the stainless steel drum with a washcloth after use of the Washing Machine; running empty loads with bleach and baking soda through the Machine; wiping the seal of the Machines; cleaning the filter of the Machines; running vinegar through the Machines; leaving the door open after each wash (despite the obvious danger to children and inconvenience in tight spaces normally associated with laundry rooms); running the sanitary cycle all the time; using only a teaspoon of laundry detergent; running Clorox through the Machines; using the product Whirlout; cleaning the rubber seal on a regular basis with Fantastik®; switching from liquid High Efficiency ("HE") detergent to powdered HE detergent; hand-drying the Machines out after each use; running weekly hot water cycles and wiping the gasket with bleach and hot water after every use of the Machine; using sanitizer; running back-to-back empty-load cycles of water and bleach; draining the Machines

through the drain plug; and refraining from using liquid fabric softener (even in LG Machines that have a compartment specifically for liquid fabric softener).

26. Tellingly, neither the mold, mildew and/or foul odor problems nor the alleged “solutions” were set forth in Plaintiffs’ Owner’s Manuals that accompanied the LG Machines. Moreover, none of these alleged “solutions” methods stopped the mold, mildew and/or foul odor problems that plague Plaintiffs’ and Class Members’ LG Washing Machines.

27. As a result of the mold, mildew and/or foul odor problems, Plaintiffs collectively have been forced to endure, *inter alia*, mold, mildew and/or foul odors in their Machines and on their clothes and other items.

#### **DEFENDANT**

28. LG is a Delaware corporation and maintains its principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, where it employs approximately 400 people and concentrates its base of operations. LG is a wholly-owned subsidiary of LG Korea. LG manufactures thousands of washing machines each year, a substantial portion of which are sold or offered for sale in New Jersey. LG has sold, either directly or indirectly, thousands of its defective Washing Machines nationwide and in the State of New Jersey.

29. LG’s New Jersey office serves as the headquarters for its design, marketing and sales in the United States and provides all sales support. Upon information and belief, all corporate decisions regarding the Washing Machines, and the representations and acts of concealment which are the subject of this lawsuit were directed by, or emanated from, LG representatives working in New Jersey or directly reporting to superiors situated in New Jersey. In addition, upon information and belief, LG’s investigation regarding the defective Washing

Machines primarily was undertaken by personnel working from and within New Jersey.

30. Several different teams of LG employees who are involved in and are knowledgeable about the marketing and advertising of LG's Washing Machines, including LG's product development, marketing, training and public relations groups, are located in New Jersey and all documents related to these functions are located in New Jersey. Members of these teams in New Jersey who will likely be material witnesses in this case include the following:

<u>Name</u>	<u>Corporate Title</u>	<u>Position: "Digital Appliances Division"</u>
Kang, Jung Hoon	Manager	Sales Engineer
Kavanaugh, Tim	Director	Director, Merchandising
Lee, Tae Jin	Manager	Product Manager for Laundry Washers
Martella, Janine	Manager	Category Merchandising Manager
Park, David	Assistant	Market Analyst
Soh, Jinwon	Manager Sr. Manager	Product Planning
Weinstock, John	Vice President	Vice President, Marketing

31. In addition to the New Jersey LG personnel, the LG Korea-based personnel that are involved in matters relevant to this action routinely travel to LG's New Jersey headquarters, participate in LG's activities there and are expected to continue to travel to New Jersey.

#### **JURISDICTION AND VENUE**

32. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which certain of the Class members and Defendant are citizens of different states.

33. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because Defendant is a resident of this judicial district and does business throughout this district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims took place within this

district.

### **FACTUAL BACKGROUND**

#### **Facts Common To The Class**

34. Defendant LG Electronics USA, Inc. holds itself out to the public as a manufacturer of safe, cutting-edge, and easy-to-use home appliances, including washing machines. Defendant is in the business of manufacturing, producing, distributing, and/or selling washing machines throughout the United States.

35. Defendant has manufactured, produced, and/or distributed front-loading washing machines for several leading retailers in the United States, such as Home Depot, Sears and Best Buy.

36. LG provided Plaintiffs and each owner of the subject Washing Machines with a one-year factory warranty for parts and labor, a two-year factory warranty for the electronic control board, a seven-year factory warranty for the drum motor, and a lifetime warranty for the stainless steel drum. LG's express warranty provides coverage for repairs to correct any Washing Machine defect related to materials or workmanship occurring during the warranty period. Under this warranty, LG was obligated, *inter alia*, to repair the defect at no charge. Defendant has these same obligations with respect to Plaintiffs and all Class members, but has failed to satisfy these obligations.

37. LG intended for customers to believe its uniform statements about its Washing Machines and to trust that its high-end Washing Machines were and are of first-rate quality (compared with other machines) for washing and cleaning clothing and protecting clothing fabrics, despite LG's knowledge that these statements were misleading due to its omission of



material facts about defects in its Machines.

38. In conjunction with each sale, Defendant warranted that the defective Washing Machines were fit for the ordinary purpose for which such goods were used and were free from defects.

39. LG has concealed material facts regarding the Washing Machines, including design defects, which cause mold, mildew and/or foul odors to accumulate within the Washing Machines, escape from the Machines if the doors to the Machines are left open, and contaminate clothes washed in the Machines. These defects render the Machines to be unusable for the ordinary purpose for which they were advertised, marketed and sold.

40. Upon information and belief, the stainless steel drums (which come with a lifetime warranty), among other things, play a role in the accumulation of mold, mildew and/or foul odor within the Washing Machines, by *inter alia*, not fully or properly draining in connection with each and every wash cycle. Also playing a role in the accumulation of mold, mildew and/or foul odors is the door seal, which, among other things, does not fully or properly drain. Furthermore, while offering the Washing Machines for sale to the general public, Defendant was aware of a defect with the stainless steel drum and/or door seal and that none of the proposed solutions it offered Plaintiffs and Class members would adequately remedy the defects, and has succeeded in effectively profiting by failing and refusing to correct the defects in the Washing Machines.

41. LG was in exclusive possession of this information about any potential defects, which were material to Plaintiffs and Class members, and LG had a duty, under all of the circumstances, to disclose the defects to Plaintiffs and Class members. Nevertheless, LG has

failed and refused to warn its customers of the serious defects inherent in the Washing Machines or to warn them regarding the problems and that they have a material likelihood of encountering regarding mold, mildew and/or foul odors due to the defects; and instead, LG has sat silent while consumers purchased and continue to purchase its defective Machines.

42. LG has also refused, and continues to refuse, to effectively remedy the problems and defects inherent in the Machines.

43. Furthermore, LG failed to cure the defect, long since known, through application of appropriate engineering of LG front load washers, tooling in the manufacturing process, and/or use of a reasonable alternative design.

44. In light of LG's knowledge of the problems associated with, and the serious nature of the defects at issue, LG knew, or should have known, that it was selling the Washing Machines to consumers with a value that was substantially diminished.

45. Plaintiffs and Class members reasonably expected that the Washing Machines would not contain design defects that would substantially impair the Machines' performance and use. Plaintiffs and Class members also reasonably expected that the Machines would not require extensive and expensive repairs (or the purchase of extended or third party warranties to continuously attempt to fix problems inherent in the Washers) as a result of the defects, which defects were known to LG at the time of sale. If LG had not misrepresented and concealed material information regarding the defective nature of the Washing Machines, Plaintiffs and other members of the Class would not have purchased the Machines at premium prices, and on the terms offered.

46. LG also has profited, either directly or indirectly, by concealing the nature of the

defects because LG has been able to convince a large number of consumers to purchase the Washing Machines and to pay LG for repair services (from which LG earns a profit) to address the problems arising from the defects at issue -- even though LG has no effective remedy for the defects, and has in fact profitted by failing and refusing to correct the defects in the Washing Machines.

47. As a result of LG's deceptive conduct and material concealments, as well as LG's other misconduct described in this Complaint, Plaintiffs and the Class bought thousands of the Washing Machines and have suffered -- and continue to suffer -- injury as a result of the defective nature of these Washing Machines, and not resulting from the ordinary course of usage by Plaintiffs and Class members.

48. As described above, LG is aware of the mold, mildew and/or foul odor problems at issue in this case, and has been for some time. Plaintiffs and many members of the Class have alerted Defendant to the mold, mildew and/or odor problems by complaining to Defendant directly and/or to Defendant's authorized dealerships and service persons. Indeed, many members of the Class have posted their experiences with the defective Washing Machines on the Internet, including, but not limited to, postings appearing in two on-line forums: <http://www.dld123.com/ci&a/index.php?cid=443>; and [http://www.consumeraffairs.com/homeowners/lg\\_washing\\_machine.html](http://www.consumeraffairs.com/homeowners/lg_washing_machine.html).

49. During 2007, at LG's customer call center in Northern Alabama, service representatives each fielded dozens of calls on a daily basis regarding mold, mildew and/or odor accumulation in the Washing Machines. The complaints were not limited to one model of the Washing Machines but, instead, related to all LG's front-loading Machines, and these complaints

(regarding mold, mildew and/or foul odor in the Washing Machines) were, by far, the most common complaints received by LG customer service representatives of all electronic products sold by LG in the United States. Upon information and belief, LG acknowledged internally that the defects causing this mold, mildew and/or foul odor accumulation related to, *inter alia*, defects in the Washing Machines' stainless steel drums and door seals, among other things, which resulted in its failing to drain properly, and that LG had no effective way to repair or remedy the defects in the Machines. Even if LG did offer a repair under its limited warranty (as opposed to the lifetime warranty pertinent to the stainless steel drum) for customers under certain circumstances, this repair "effort" did not meet or fulfill LG's warranty obligations because the "repair" failed to remedy the defect and the Machines still continued to accumulate mold, mildew and/or odor. Despite its legal obligations, LG has not and will not consider any refunds of any kind to customers affected by this pervasive problem. Finally, while recognizing the scope and magnitude of the problems caused by the defects, both internally and at conferences with salespeople and national outlets such as Best Buy, LG consistently has denied to the consuming public the scope and magnitude of the problems caused by these defects.

50. Upon information and belief, LG has even verified to its technicians at training seminars - by physically opening up the washing machines - that its front-loading Washing Machines are predisposed to the formation of mold, mildew and/or odor.

51. Upon information and belief, LG is aware that large numbers of Washing Machines sold nationwide through Home Depot alone suffered from these mold, mildew and/or odor problems. Moreover, LG representatives have admitted to persons employed by Best Buy that the Machines suffer from these problems.

52. During 2006 and 2007, a large percentage of returns of LG front-loading Washing Machines (perhaps as many as 50%) were returned to LG due to mold, mildew and/or odor problems.

53. LG failed to adequately design and/or test the Washing Machines to ensure that they were and are free from material defects. Before these models even reached the market, LG knew, or was reckless in not knowing, that they: (a) contained inherent defects; and (b) were not of merchantable quality or fit for their ordinary purpose.

54. To this day, Defendant continues to conceal material information from users, consumers, and the public, through its customer service representatives, that: (a) the Washing Machines are inherently defective; and (b) the Washing Machines are not of merchantable quality or fit for their ordinary purpose.

**New Jersey's Substantive Law Applies To The Proposed Nationwide Class**

55. New Jersey's substantive laws apply to the proposed Nationwide Class, as defined herein, because Plaintiffs properly bring this Complaint in this District. Further, a number of actions were originally filed in this District.

56. New Jersey's substantive laws may be constitutionally applied to the claims of Plaintiffs and the Nationwide Class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. New Jersey has significant contact, or significant aggregation of contacts, to the claims asserted by each Plaintiff and all Class members, thereby creating state interests that ensure that the choice of New Jersey state law is not arbitrary or unfair.

57. Defendant's United States headquarters and principal place of business is located



in New Jersey. LG also owns property and conducts substantial business in New Jersey, and therefore New Jersey has an interest in regulating Defendant's conduct under its laws.

Defendant's decision to reside in New Jersey and avail itself of New Jersey's laws renders the application of New Jersey law to the claims herein constitutionally permissible.

58. New Jersey is also the location where Plaintiff Ashe and a significant number of Class members were injured by virtue of the misconduct alleged herein. Plaintiff Ashe resides in New Jersey and bought his Washing Machine in New Jersey. A substantial number of members of the proposed Nationwide Class also reside in New Jersey and bought LG Washing Machines in New Jersey.

59. New Jersey is also the State from which Defendant's alleged misconduct emanated. This conduct similarly injured and affected all Plaintiffs and Class members residing in the United States. For instance, Defendant's marketing efforts relating to LG's Washing Machines were created and orchestrated from its headquarters in New Jersey. More specifically, New Jersey has the following significant contacts to the claims of Plaintiffs and Class members:

- a. LG's New Jersey office serves as the headquarters for its marketing and sales in the United States and provides all sales support;
- b. Upon information and belief, all corporate decisions regarding the Washing Machines, and the representations and acts of concealment which are the subject of this lawsuit were directed by, or emanated from, LG representatives working in New Jersey or directly reporting to superiors situated in New Jersey;
- c. Several different teams of LG employees who were involved in and are knowledgeable about the marketing and advertising of LG's Washing Machines, including LG's

product development, marketing, training and public relations groups, are located in New Jersey and all documents related to these functions are located in New Jersey;

d. Furthermore, upon information and belief, all customer complaints received at LG's customer call centers were and are forwarded to LG representatives working in New Jersey, who in turn dictate the scripted responses that are to be given to complaining customers; and

e. In addition to the New Jersey LG personnel, the LG Korea-based personnel that are involved in matters relevant to this action routinely travel to LG's New Jersey headquarters and are expected to continue to travel to New Jersey.

60. The application of New Jersey's laws to the Nationwide Class is also appropriate under New Jersey's choice of law rules because New Jersey has significant contacts to the claims of the Plaintiffs and the proposed Nationwide Class, and New Jersey has a greater interest in applying its laws here than any other interested state.

61. In the alternative, the Court may apply the substantive law of the States where the named Plaintiffs reside and/or bought their Washing Machines: California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas and Wisconsin.

#### **CLASS ACTION ALLEGATIONS**

62. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated, pursuant to Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

63. The Class that Plaintiffs seek to represent is defined as follows:

#### **Nationwide Class:**

All persons or entities residing in the United States who purchased, not for resale, a Washing Machine ("Class").

64. In the alternative to the claims asserted on behalf of the Class, Plaintiffs also bring this action on behalf of the following Sub-Classes, as more fully set forth below and to the extent appropriate:

**Sub-Classes:**

**California:** All Class members who purchased a Washing Machine in the State of California and who purchased the Machine for primarily personal, family or household purposes as defined by California Civil Code § 1791(a).

**Colorado:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Colorado.

**Connecticut:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Connecticut.

**Florida:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Florida.

**Illinois:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Illinois.

**Massachusetts:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Massachusetts.

**Michigan:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Michigan.

**New Jersey:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in New Jersey.

**New York:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in New York.

**North Carolina:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in North

Carolina.

**Ohio:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Ohio.

**Pennsylvania:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Pennsylvania.

**Texas:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in Texas.

**Wisconsin:** All Class members who purchased a Washing Machine for primarily personal, family or household purposes, and not for resale, in the State of Wisconsin.

Excluded from the Class and Sub-Classes ("Classes") are Defendant, its affiliates, employees, officers and directors, persons or entities that distribute or sell the Washing Machines, the Judge(s) assigned to this case, and the attorneys of record in this case. Plaintiffs reserve the right to amend the Class and Sub-Class definitions if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

65. **Numerosity/Impracticability of Joinder:** The members of the Classes are so numerous that joinder of all members would be impracticable. The proposed Classes include thousands of members. The precise number of Class members can be ascertained by reviewing documents in Defendant's possession, custody and control.

66. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, include, but are not limited to the following:

- (a) Whether the Washing Machines are defective;
- (b) Whether LG knew that the Washing Machines were and are defective;

- (c) Whether LG omitted and concealed material facts from its communications and disclosures to Plaintiffs and the Classes regarding the defects inherent in the Washing Machines;
- (d) Whether LG has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the sale of the Machines;
- (e) Whether New Jersey law can and should be applied to the Nationwide Class;
- (f) Whether LG violated various state consumer protection statutes;
- (g) Whether LG breached its warranty and/or extended warranties;
- (h) Whether LG breached its implied warranties;
- (i) Whether LG has been unjustly enriched;
- (j) Whether, as a result of LG's conduct, Plaintiffs and the Classes have suffered damages; and if so the appropriate amount thereof; and
- (k) Whether, as a result of LG's misconduct, Plaintiffs and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

67. **Typicality:** The representative Plaintiffs' claims are typical of the claims of the members of the Class and, as applicable, each respective Sub-Class. Plaintiffs and all Class members have been injured by the same wrongful practices in which LG has engaged. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class members and, as applicable, members of the Sub-Classes, and are based on the same legal theories.

68. **Adequacy:** Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Classes, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests



which are contrary to or conflicting with the Classes.

69. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Classes are likely in the millions of dollars, the individual damages incurred by each Class member resulting from LG's wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Classes do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, LG has acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

70. Plaintiffs do not anticipate any difficulty in the management of this litigation.

71. Defendant has, or has access to, address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

**Notice To Attorneys General Of Action**

72. A copy of this Complaint shall be mailed to the Attorneys General,

Administrators, Commissioners, or other officers, as required by law, and upon and at the time of the filing of the Complaint pursuant to: N.J.S.A. § 56:8-20, and Tex. Bus. & Com. Code § 17501(a)(1).

**FIRST CAUSE OF ACTION**

**Asserted On Behalf Of The Nationwide Class Against LG,  
And Alternatively, On Behalf of The New Jersey Sub-Class Against LG  
(Violations Of New Jersey Consumer Fraud Act ("CFA") (N.J.S.A. § 56:8-1 *et seq.*))**

73. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

74. Plaintiffs, other members of the Class, and LG are "persons" within the meaning of the CFA.

75. Plaintiffs and other members of the Class are "consumers" within the meaning of the CFA.

76. At all relevant times material hereto, LG conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

77. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

78. LG has engaged in deceptive practices in the sale of the defective front-loading Washing Machines including: (1) selling Washing Machines with a design flaw that causes mold, mildew and/or foul odor to occur with normal use and/or created a substantial risk that mold, mildew and/or foul odor would occur with normal use; and (2) intentionally failing to disclose and/or concealing this known defect and risk.

79. LG consciously omitted to disclose material facts to Plaintiffs and other members

of the Class with respect to the defects that cause mold, mildew and/or odor to occur with normal use and/or creates a substantial risk that mold, mildew and/or odor would occur with normal use.

80. LG's unconscionable conduct described herein included the omission and concealment of material facts concerning the Washing Machines.

81. LG intended that Plaintiffs and the other members of the Class rely on the acts of concealment and omissions, so that Plaintiffs and other Class members would purchase the Washing Machines.

82. Had LG disclosed all material information regarding the Washing Machines to Plaintiffs and other members of the Class, they would not have purchased the Machines.

83. The foregoing acts, misrepresentations, omissions and unconscionable commercial practices caused Plaintiffs and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to repair and replace the Washing Machines and diminution in value of the Washing Machines, and they are entitled to recover such damages, together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

84. Application of the CFA to all Class members located throughout the country, regardless of their state of residence, is appropriate as described herein and because, *inter alia*:

a. LG controlled and directed their nationwide sales operations and support operations from New Jersey;

b. LG's marketing operations and decisions, including the decisions as to how to advertise, promote and sell Washing Machines, were made in New Jersey and Defendant's sales and marketing personnel all are based here;

c. LG's principal place of business is located in New Jersey;

d. The majority of significant employees of LG are based in New Jersey, and the LG Korea-based personnel relevant to this action routinely travel to LG's New Jersey headquarters and are expected to continue to do so;

e. The majority of significant documents of LG are located in New Jersey;

f. The facts and circumstances of this case bestow numerous contacts with the State of New Jersey so as to create a state interest in applying the CFA to LG, thereby making application of New Jersey law to the entire Class appropriate.

85. Alternatively, Plaintiff Ashe seeks all available remedies on behalf of himself and the New Jersey Sub-Class.

**SECOND CAUSE OF ACTION**  
**Asserted On Behalf Of Nationwide Class Against LG**  
**(Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) --Written Warranty)**

86. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

87. LG's Washing Machines are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

88. Plaintiffs and Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3), and utilized the Washing Machines for personal and household use and not for resale or commercial purposes.

89. Defendant is a "warrantor" and "supplier" as those terms are defined by 15 U.S.C. § 2301(4) and (5).

90. Defendant provided Plaintiffs and Class members with "written warranties" as that term is defined by 15 U.S.C. § 2301(6).

91. In its capacity as a warrantor, and by the conduct described herein, any attempt by Defendant to limit the express warranties in a manner that would exclude coverage of the defective Washing Machines is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective Washing Machines is null and void.

92. All jurisdictional prerequisites have been satisfied.

93. By Defendant's conduct as described herein, including Defendant's knowledge of the defective Washing Machines and its action, and inaction, in the face of that knowledge Defendant has failed to comply with its obligations under its written and implied promises, warranties, and representations.

94. As a result of Defendant's breach of express warranties, Plaintiffs and Class members are entitled to revoke their acceptance of the Washing Machines, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

**THIRD CAUSE OF ACTION**  
**Asserted On Behalf Of The Nationwide Class Against LG, And Alternatively, On**  
**Behalf Of Each Sub-Class Against LG Pursuant To State Law**  
**(Breach Of Express Warranty)**

95. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

96. Plaintiffs seek to recover for LG's breach of express warranty under the laws of the State of New Jersey.

97. LG warranted all of the Washing Machines against defects in material or workmanship at a time when it knew that these Machines suffered from a serious defect and, nevertheless, continued to market and sell these Machines with this express warranty.



98. LG also sold extended warranties to Plaintiffs and some members of the Class even though it had no intention of remedying the serious defects in material and workmanship inherent in the Machines and has continued to market and sell extended warranties with respect to the Machines despite the serious defects in the Washing Machines.

99. LG further warranted the stainless steel drums for their lifetime.

100. LG is obligated under the terms of its express warranty to repair and/or replace the defective Machines sold to Plaintiffs and the Class.

101. LG has breached its express warranties, as set forth above, including its extended warranties, by supplying the Washing Machines in a condition which does not meet the warranty obligations undertaken by LG and by failing to repair or replace the defect and/or defective parts, including the stainless steel drum, inherent in the Machines.

102. LG has received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and LG's knowledge, LG refuses to honor its warranty, even though it knows of the inherent defect in the Washing Machines.

103. In addition, LG has received, upon information and belief, thousands of complaints and other notices from its customers nationwide advising it of the defects in the Washing Machines.

104. Plaintiffs have given Defendant a reasonable opportunity to cure its failures with respect to its warranties, and Defendant failed to do so.

105. LG has failed to provide to Plaintiffs or the Class members, as a warranty replacement, a product that conforms to the qualities and characteristics that LG expressly warranted when it sold the Washing Machines to Plaintiffs and members of the Class.

106. As a result of LG's breach of warranty, Plaintiffs and the Classes have suffered damages in an amount to be determined at trial.

107. Alternatively, Plaintiffs seek to recover for LG's breach of express warranty under the substantially similar laws of the states of purchase, specifically: California (Song-Beverly Act, Civil Code §1790 *et seq.*), Colorado (C.R.S.A. §4-2-313), Connecticut (C.G.S.A. §42a-2-313), Florida (F.S.A. §672.313), Illinois (810 ILCS 5/2-313), Massachusetts (M.G.L.A. 106 §2-313), Michigan (Michigan Uniform Commercial Code, § 440.2313), New Jersey (N.J.S.A. 12A:2-313), New York (New York Uniform Commercial Code §2-313), North Carolina (N.C.G.S.A. §25-2-313), Ohio (Ohio Rev. Code §1302.26), Pennsylvania (13 Pa. C.S.A. §2313), Texas (Tex. Bus. & Com. Code Ann. §2-313) and Wisconsin (W.S.A. §402.313).

#### **FOURTH CAUSE OF ACTION**

#### **Asserted On Behalf Of The Nationwide Class Against LG, And Alternatively, On Behalf Of Each Sub-Class Against LG Pursuant To State Law (Breach Of Implied Warranty Of Merchantability)**

108. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

109. Plaintiffs seek to recover for LG's breach of implied warranty under the laws of the State of New Jersey.

110. Defendant's implied warranty of merchantability accompanied the sale of the Washing Machines to Plaintiffs and members of the Class.

111. LG is a merchant in the sale of the Washing Machines to Plaintiffs and the Class members. LG manufactures, markets and sells the Washing Machines. LG provided Plaintiffs and the Class members with an implied warranty that the Washing Machines were merchantable

and fit for the ordinary purposes for which they were sold. The Washing Machines are not fit for the ordinary purpose of cleaning clothing and other articles, because, *inter alia*, the Washing Machines are defective in that they contain design defects that cause the Washing Machines to accumulate mold, mildew and/or foul odors within the Washing Machines and to produce a moldy odor that permeates consumers' homes and clothing. Accordingly, clothing is not cleaned in the Machines.

112. The alleged defects are so basic that they render the Washing Machines unfit for the ordinary purpose of cleaning clothing and other articles.

113. LG knew or had reason to know that Plaintiffs and the Class members purchased the Washing Machines to effectively wash their clothing and other articles.

114. The Washing Machines do not conform to the promises and affirmations uniformly issued by Defendant in its sales materials and warranties.

115. Plaintiffs and the Class members have used the Washing Machines for their intended and ordinary purpose of cleaning clothing and other articles.

116. Plaintiffs and the Class members have performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendant or by operation of law in light of Defendant's unconscionable conduct.

117. Plaintiffs and the Class members have provided sufficient and timely notice to Defendant regarding the problems they experienced with the Washing Machines and, notwithstanding such notice, Defendant has failed and refused to offer Plaintiffs and the Class members an effective remedy.

118. In addition, Defendant has received, on information and belief, thousands of

complaints and other notices from consumers advising them of the defects associated with the Washing Machines.

119. By virtue of the conduct described herein, Defendant breached the implied warranty of merchantability.

120. Plaintiffs and the Class members have been damaged as a direct and proximate result of LG's breach of the implied warranty.

121. Alternatively, Plaintiffs seek to recover for LG's breach of implied warranty, warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, 2301(7), 2310, and the substantially similar laws of the states of purchase, specifically: California (Song-Beverly Act, Civil Code §1790 *et seq.*), Colorado (C.R.S.A. §4-2-314), Connecticut (C.G.S.A. §42a-2-314), Illinois (810 ILCS 5/2-314), Massachusetts (M.G.L.A. 106 §2-314), Michigan (Michigan Uniform Commercial Code, § 440.2314), New Jersey (N.J.S.A. 12A:2-314), New York (New York Uniform Commercial Code §2-314), Ohio (tortious breach of warranty), Pennsylvania (13 Pa. C.S.A. §2314), Texas (Tex. Bus. & Com. Code Ann. §2-314) and Wisconsin (W.S.A. §402.314).

**FIFTH CAUSE OF ACTION**  
**Asserted On Behalf Of The Nationwide Class Against LG, And Alternatively, On Behalf Of**  
**Each Sub-Class Against LG Pursuant To State Law**  
**(Unjust Enrichment)**

122. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

123. In the alternative, LG has been unjustly enriched by the purchases of the Washing Machines by Plaintiffs and the Class members.

124. Plaintiffs seek to recover for LG's unjust enrichment under the law of the State of New Jersey.

125. Plaintiffs and the Class members unknowingly conferred a benefit on LG of which LG had knowledge since LG was aware of the defective nature of the Washing Machines and the problems that plagued them, but failed to disclose this knowledge and misled Plaintiffs and the Class members regarding the nature and quality of the Washing Machines while profiting from this deception.

126. The circumstances are such that it would be inequitable, unconscionable and unjust to permit LG to retain the benefit of these profits that it unfairly has obtained from Plaintiffs and the Class members.

127. Plaintiffs and the Class members, having been damaged by LG's conduct, are entitled to recover or recoup damages as a result of the unjust enrichment of LG to their detriment.

128. Alternatively, Plaintiffs and the Class members seek to recover for LG's unjust enrichment under the substantially similar laws of the states of purchase, specifically: California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas and Wisconsin.

#### **SIXTH CAUSE OF ACTION**

**Asserted, In The Alternative, On Behalf Of The California Sub-Class Against LG  
(Unfair Competition Law (Bus. & Prof. Code §17200 et seq.))**

129. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

130. Plaintiff Boone asserts this cause of action on behalf of herself and the California



Sub-Class.

131. Defendant has engaged in unfair, unlawful, and fraudulent business practices as set forth above.

132. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of Business and Professions Code §17200 *et seq.*

133. Defendant's acts and practices have deceived and/or are likely to deceive members of the consuming public and the Class.

134. LG knowingly sold Plaintiff Boone and the California Sub-Class and other consumers Washing Machines with design defects that have rendered the Machines essentially unusable for the purposes for which they were sold.

135. The injury to consumers by this conduct is greatly outweighed by any alleged countervailing benefit to consumers or competition under all of the circumstances. Moreover, in light of LG's exclusive knowledge of the defects, the injury is not one that Plaintiff Boone and members of the California Sub-Class could have reasonably avoided.

136. Defendant's acts and practices are unlawful because they violate Civil Code §§1668, 1709 and 1710. Defendant's acts and practices are also unlawful because they violate the Song-Beverly Act, Civil Code § 1790 *et seq.* and California Commercial Code § 2313.

137. Plaintiff Boone, on behalf of herself and the California Sub-Class, seeks an order of this Court awarding restitution, disgorgement, injunctive relief and all other relief allowed under Section 17200 *et seq.*, plus interest, attorneys' fees and costs.

**SEVENTH CAUSE OF ACTION**

**Asserted, In The Alternative, On Behalf Of The California Sub-Class Against LG  
The Song-Beverly Act - Breach Of Express Warranty  
(Violations Of Civil Code § 1790 *et seq.*)**

138. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

139. Plaintiff Boone asserts this cause of action on behalf of herself and the California Sub-Class.

140. As an express warrantor and manufacturer, LG had certain obligations under the Song-Beverly Act, and, in particular, Civil Code §1793.2(b) and (d), to conform the Washing Machines to the express warranty.

141. LG has been unable to conform the Washing Machines to the express warranty after a reasonable number of attempts at repair. Defendant is, therefore, required to either pay damages or reimburse the buyer the purchase price and incidental damages pursuant to Civil Code §§ 1793.2(d) and 1794.

142. Defendant knew of its obligations under its warranty to pay for a new Machine, as needed, caused by the defect described herein. However, LG has willfully refused to pay for a new Machine as required under the warranty. LG is, therefore, liable for not only damages, but also a civil penalty pursuant to Civil Code § 1794.

**EIGHTH CAUSE OF ACTION**

**Asserted, In The Alternative, On Behalf Of The California Sub-Class Against LG  
The Song-Beverly Act - Breach Of Implied Warranty  
(Violations Of Civil Code § 1790 *et seq.*)**

143. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

144. Plaintiff Boone asserts this cause of action on behalf of herself and the California Sub-Class.

145. LG was a merchant in the sale of the Washing Machines to Plaintiff Boone and the Sub-Class members.

146. By operation of law, LG provided Plaintiff Boone and the members of the California Sub-Class with an implied warranty of merchantability in the sale and lease of the Washing Machines.

147. Plaintiff Boone's Washing Machine and the Machines purchased by members of the California Sub-Class are not fit for the ordinary purposes for which such Machines are used, because the defects cause the Machines to, among other things, produce and accumulate mold, mildew and/or odor, thereby seriously impairing the use and functionality of the Machines in a manner that does not meet the reasonable expectations of Plaintiff Boone or any other purchaser of the Machines. Thus, the Machines do not operate as they should when used for their ordinary purposes, and the manner in which the defective Machines do perform is so deficient and below a minimum level of quality so as to render them unfit for their ordinary use and purpose.

148. By failing to repair the Washing Machines and by failing to replace the Washing Machines as needed, LG has breached the implied warranty of merchantability.

149. Plaintiff Boone and the members of the California Sub-Class have been damaged as a result of LG's breach of the implied warranty.

150. Plaintiff Boone and the members of the California Sub-Class are entitled to the remedies provided by California Civil Code § 1794.

**NINTH CAUSE OF ACTION**

**Asserted, In The Alternative, On Behalf Of The Colorado Sub-Class Against LG  
(Violation Of Colorado Consumer Protection Act ("CCPA"), C.C.P.A. § 6-1-101, *et seq.*)**

151. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

152. LG's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the CCPA.

153. At all relevant times hereto, Plaintiffs Cook and Cook-Sommer ("Colorado Plaintiffs") were "persons" under the CCPA.

154. At all relevant times hereto, LG was a "person" engaged in "trade or commerce" under the CCPA and its actions and inactions significantly impact the public as consumers of LG Washing Machines.

155. Under all of the circumstances set forth, LG's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

156. The foregoing acts, omissions and practices proximately caused Colorado Plaintiffs and other members of the Colorado Sub-Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to replace the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees and costs of suit.

**TENTH CAUSE OF ACTION**

**Asserted, In the Alternative, On Behalf Of The Connecticut Sub-Class Against LG  
(Violations Of Connecticut Unfair Trade Practices Act ("CUTPA"),  
Conn. Gen. Stat. Ann. § 42-110a, *et seq.*)**

157. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully

set forth herein.

158. The Connecticut Unfair Trade Practices Act prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. Ann. § 42-110b(a).

159. CUTPA explicitly provides for a private cause of action for anyone who has suffered an ascertainable loss of money or property as a result of the use or employment of a method, act, or practice prohibited by CUTPA. Conn. Gen. Stat. Ann. § 42-110g.

160. LG knowingly concealed, suppressed and failed to disclose material facts in connection with its marketing and sale of the Defective Washing Machines.

161. LG's conduct, as set forth above, constitutes an unfair method of competition and/or unfair and/or deceptive acts and practices prohibited under CUTPA.

162. As a result of such conduct, Plaintiff Irving and other members of the Connecticut Sub-Class have suffered an ascertainable loss of monies and/or property.

163. Plaintiff Irving and other members of the Connecticut Sub-Class are entitled to compensatory damages, as well as costs and reasonable attorneys' fees pursuant to Conn. Gen. Stat. Ann. § 42-110g(d).

164. Plaintiff Irving and other members of the Connecticut Sub-Class are also entitled to punitive damages because LG's conduct reveals a reckless indifference to the rights of others and/or an intentional and wanton violation of those rights.

**ELEVENTH CAUSE OF ACTION**  
**Asserted, In The Alternative, On Behalf Of The Florida Sub-Class Against LG**  
**(Violation Of Florida's Deceptive And Unfair Trade Practices Act,**  
**F.S.A., 501.201 et seq. (“FDUTPA”))**

165. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if



fully set forth herein.

166. At all relevant times, Plaintiffs Harpers and Launch ("Florida Plaintiffs") and all members of the Florida Sub-Class were consumers within the meaning of FDUTPA.

167. At all relevant times hereto, LG engaged in trade and/or commerce within the meaning of FDUTPA.

168. The practices of Defendant violate FDUTPA for, *inter alia*, one or more of the following reasons:

a. LG omitted and concealed material facts from its communications and disclosures to Florida Plaintiffs and all members of the Florida Sub-Class regarding the defects inherent in the Washing Machines; and

b. LG knew, or was reckless in not knowing, that its statements about the Washing Machines were false and/or misleading due to the omission of material facts.

169. By the conduct described herein, Defendant has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce.

170. The representations and omissions by Defendant were likely to deceive reasonable consumers and a reasonable consumer would have relied on these representations and omissions.

171. Had LG disclosed all material information regarding the Washing Machines to Florida Plaintiffs and all of the members of the Florida Sub-Class, they would not have purchased the Washing Machines.

172. The foregoing acts and practices proximately caused Florida Plaintiffs and other members of the Florida Sub-Class to suffer actual damages in the form of, *inter alia*, monies spent to repair the Washing Machines and/or diminution in value of the Washing Machines, and

are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees and costs of suit.

**TWELTH CAUSE OF ACTION**

**Asserted, In The Alternative, On Behalf Of The Illinois Sub-Class Against LG  
(Violation Of Illinois Consumer Fraud And Deceptive Practices Act, ("CFDPA")  
Ill. Comp. Stat. Ann. 505/1 et seq., 510/1 et seq.)**

173. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

174. At all relevant times, Plaintiff Scalise and all members of the Illinois Sub-Class were consumers within the meaning of CFDPA.

175. At all relevant times hereto, LG engaged in trade and/or commerce within the meaning of CFDPA.

176. Despite knowing that the Washing Machines are manufactured and sold with an inherent defect, as described herein, that causes mold, mildew and/or odor to accumulate within the Washing Machines, produces a moldy odor that permeates consumers' homes if the doors to the Washing Machines are left open, and produces mold, mildew and/or odor on clothes washed in the Machines, when it markets and sells the Machines, LG uniformly represents to customers and the general public that the Machines are free from defects and will perform in the manner and for the purpose for which they are intended.

177. Under all circumstances, LG's representations and/or omissions regarding the defects in the Washing Machines were misleading and deceptive, and LG intentionally made these misleading and deceptive representations and/or omissions (while knowing they were deceptive and misleading) for the sole purpose of deceiving Plaintiff Scalise and members of the Illinois Sub-Class. Defendant intended that Plaintiff Scalise and members of the Illinois Sub-

Class rely on LG's deceptive and misleading practice.

178. LG's conduct was unfair and deceptive and constituted an improper concealment, suppression or omission of material facts, in violation of the CFDPA's prohibition against unfair business practices.

179. LG violated the CFDPA's prohibition against misrepresenting and omitting material information during commercial transactions, as well as the CFDPA's prohibition against unfair business practices.

180. LG's misconduct, including the misrepresentations and/or concealment of the defective condition of the Machines, as described in this Complaint, took place in the course of trade or commerce in Illinois, and arose out of transactions that occurred at one or more of its retail outlets in Illinois.

181. As a direct and proximate result of LG's violations of the CFDPA, Plaintiff Scalise and other members of the Illinois Sub-Class suffered damages, in the form of, *inter alia*, monies spent to repair the Washing Machines and/or diminution in value of the Washing Machines.

#### **THIRTEENTH CAUSE OF ACTION**

**Asserted, In The Alternative, On Behalf Of The Michigan Sub-Class Against LG  
(Violation Of Michigan Consumer Protection Act ("MCPA"),  
(M.C.L.A. § 445.901 et seq.)**

182. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

183. At all relevant times hereto, Plaintiffs Grosso and the members of the Michigan Sub-Class were "persons" and LG was a "person" engaged in "trade or commerce" under the MCPA.

184. Plaintiffs Grosso purchased their Washing Machine primarily for personal, family and household purposes.

185. The practices of Defendant violate MCPA for, *inter alia*, one or more of the following reasons:

a. LG engaged in unconscionable commercial practices in failing to reveal material facts and information about the Washing Machines, which did, or tended to, mislead Plaintiffs and the Class about facts that could not reasonably be known by the consumer;

b. LG failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;

c. LG intended that Plaintiffs Grosso and the members of the Michigan Sub-Class rely on their omissions, so that Plaintiffs Grosso and the members of the Michigan Sub-Class would purchase the Washing Machines; and

d. Under all of the circumstances, LG's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

186. LG's violation of the MCPA did not result from a *bona fide* error notwithstanding the maintenance of procedures reasonably adopted to avoid the violations alleged herein.

187. The foregoing acts, omissions and practices proximately caused Plaintiffs Grosso and the members of the Michigan Sub-Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to repair or replace the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees and costs of suit.

**FOURTEENTH CAUSE OF ACTION**

**Asserted, In The Alternative, On Behalf Of The New York Sub-Class Against LG  
(Violations Of Section 349 Of New York General Business Law:  
Deceptive Acts And Practices)**

188. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

189. Plaintiffs Burke, Figueroa, and Manzello ("New York Plaintiffs") and the members of the New York Sub-Class are consumers in New York who purchased the Washing Machines and bring this action pursuant to NY GBL §349.

190. LG has engaged in deceptive practices in the sale of the defective front loading washing machines including: (1) selling washing machines with a design flaw that caused mold, mildew and/or odor to occur with normal use and/or created a substantial risk of this; and (2) failing to disclose and/or concealing this known defect and risk.

191. The unfair and deceptive trade acts and practices of LG have directly, foreseeably and proximately caused damages and injury to New York Plaintiffs and the other members of the New York Sub-Class.

**FIFTEENTH CAUSE OF ACTION**

**Asserted, In The Alternative On Behalf Of The North Carolina Sub-Class Against LG  
(Violations Of North Carolina's Unfair And Deceptive Trade Practices Act ("NCUDTPA"),  
N.C. Gen. Stat. § 75.1-1)**

192. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

193. North Carolina's Unfair and Deceptive Trade Practices Act prohibits "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." LG's business acts and practices alleged herein are a violation of the statute and affected commerce within the meaning of NCUDPTA.



194. The purchase of LG Washing Machines by Plaintiffs Zimmerman and the North Carolina Sub-Class as described herein constitute transactions in commerce within the meaning of NCUDTPA.

195. The practices of Defendant violate the NCUDTPA for, *inter alia*, one or more of the following reasons:

a. LG failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;

b. LG caused Plaintiffs Zimmerman and the members of the North Carolina Sub-Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;

c. LG failed to disclose material facts regarding the defect in the Washing Machines and omitted material facts related to the defect in its marketing and sale of the Washing Machines;

d. LG intended that Plaintiffs and the other members of the Class rely on their conduct and material omissions, so that Plaintiffs and other Class members would purchase the Washing Machines.

196. LG omitted and concealed material facts from its communications and disclosures to Plaintiffs Zimmerman and all members of the North Carolina Sub-Class regarding the defects inherent in the Washing Machine.

197. LG's acts and omissions had a tendency or capacity to deceive Plaintiffs Zimmerman and the North Carolina Sub-Class.

198. Plaintiffs Zimmerman and the North Carolina Sub-Class were injured by reason of Defendant's acts and omissions.

199. LG's conduct as described herein was unfair, deceptive, in violation of public policy, and substantially injurious to Plaintiffs Zimmerman and the North Carolina Sub-Class.

200. Plaintiffs Zimmerman and the North Carolina Sub-Class have suffered actual damages in the form of, *inter alia* monies spent to repair or replace the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees, and costs of suit.

**SIXTEENTH CAUSE OF ACTION**  
**Asserted, In the Alternative, On Behalf Of The Pennsylvania Sub-Class Against LG**  
**(Violation Of Pennsylvania Unfair Trade Practices And Consumer Protection**  
**Laws ("UTPCPL"), 73 Pa.C.S.A. §§ 201-1, *et seq*)**

201. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

202. LG is a manufacturer, marketer, seller and/or distributor of the Washing Machines.

203. The conduct alleged above constitutes unfair methods of competition or unfair or deceptive acts or practices in violation of Section 201-2(4)(v),(vii), (xiv) and (xxi) of the UTPCPL, 73 Pa.C.S.A. §§ 201-1, *et seq*.

204. The UTPCPL applies to the claims of Plaintiff Ann Trethewey and the other members of the Pennsylvania Sub-Class because the conduct which constitutes violations of the UTPCPL by the Defendant occurred within the Commonwealth of Pennsylvania.

205. Plaintiff Trethewey and the other members of the Pennsylvania Sub-Class are consumers who purchased Washing Machines and did so primarily for personal, family or household purposes within the meaning of 73 Pa.C.S.A. § 201-9.2.

206. LG used and employed unfair methods of competition and/or unfair or deceptive

acts or practices within the meaning of 73 Pa.C.S.A. §§ 201-2 and 201-3. Such unfair methods of competition and/or unfair or deceptive acts or practices include, but are not limited to the following:

a. Failing to comply with any written guaranty or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services was made (§ 201-2(4)(xiv)) (LG failed to comply with the written warranties set forth above); and

b. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding (§ 201-2(4)(xxi)) (LG deceptively created the likelihood of confusion or misunderstanding about the quality of the Washing Machines and LG's intention to honor its warranties with respect to the Washing Machines).

207. LG knew or should have known that the Washing Machines were defective, would fail prematurely, were not suitable for use, and otherwise were not as warranted and represented by LG.

208. LG's concealments, omissions, deceptions and conduct were likely to deceive and likely to cause misunderstanding and/or in fact caused Plaintiff Trethewey and the other members of the Pennsylvania Sub-Class to be deceived and to misunderstand the suitability of the Washing Machines for use and LG's intent to honor its warranties.

209. LG intended that Plaintiff Trethewey and the other members of the Pennsylvania Sub-Class would rely on its misrepresentations, concealment, warranties, deceptions and/or omissions.

210. Plaintiff Trethewey and the other members of the Pennsylvania Sub-Class have been damaged as a proximate result of LG's violations of the UTPCPL and have suffered actual, ascertainable losses by virtue of having purchased the Washing Machines.

211. As a direct and proximate result of LG's violations of the UTPCPL as set forth above, Plaintiff Trethewey and the other members of the Pennsylvania Sub-Class have suffered an ascertainable loss of money and are therefore entitled to relief, including damages, plus triple damages, costs and attorney's fees under Section 201-9.2 of the UTPCPL.

**SEVENTEENTH CAUSE OF ACTION**  
**Asserted, In The Alternative, On Behalf Of The Texas Sub-Class Against LG**  
**(Violation of Texas' Deceptive Trade Practices-Consumer Protection Act ("DTPA"),**  
**§ 17.41, et seq.)**

212. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

213. At all relevant times, Plaintiff Olejniczak and the members of the Texas Sub-Class were consumers within the meaning of DTPA.

214. At all relevant times hereto, LG engaged in trade and/or commerce within the meaning of DTPA.

215. The practices of Defendant violate DTPA for, *inter alia*, one or more of the following reasons:

- a. LG omitted and concealed material facts from its communications and disclosures to Plaintiff Olejniczak and the members of the Texas Sub-Class regarding the defect inherent in the Washing Machines;
- b. LG made false and/or misleading statements of material fact regarding the Washing Machines, which statements were likely to deceive the public;
- c. LG knew, or was reckless in not knowing, that its statements about the Washing Machines were false and/or misleading;
- d. LG represented that a guarantee or warranty confers or involves rights or

remedies which it does not have;

e. LG represented that the Washing Machines had sponsorship, approval, characteristic uses and benefits that they did not have; and

f. LG represented that the Washing Machines were of a particular standard, quality or grade, when they were not.

216. By the conduct described herein, Defendant has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce.

217. The representations and omissions by Defendant were likely to deceive reasonable consumers and a reasonable consumer would have relied on these representations and omissions.

218. Had LG disclosed all material information regarding the Washing Machines to Plaintiff Olejniczak and the members of the Texas Sub-Class, they would not have purchased the Washing Machines.

219. The foregoing acts and practices proximately caused Plaintiff Olejniczak and the members of the Texas Sub-Class to suffer actual damages in the form of, *inter alia*, monies spent to repair or replace the Washing Machines and/or diminution in value of the Washing Machines, and are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees and costs of suit.

#### **EIGHTEENTH CAUSE OF ACTION**

**Asserted, In the Alternative, On Behalf Of The Wisconsin Sub-Class Against LG  
(Violations Of Wisconsin Deceptive Trade Practices Act, ("WDTA")  
Wis. Stat. Ann. § 100.18, et seq.)**

220. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.



221. LG made, published, disseminated, circulated, and/or placed before the public, and/or caused to be made, published, disseminated, circulated, or placed before the public, advertisements, announcements, statements and representations to the public relating to the purchase, sale, hire, and use of its Washing Machines, that contained assertions, representations and statements of fact concerning the qualities and characteristics of such products.

222. Such advertisements, announcements, statements and representations were made, published, disseminated, circulated, and/or placed before the public pursuant to LG's intent: 1) to sell, distribute and increase the consumption of its Washing Machines; and/or 2) to induce the public to enter into contracts and/or obligations relating to the purchase, sale, hire, use or lease of its Washing Machines.

223. LG's aforementioned assertions, representations and statements of fact concerning the qualities and characteristics of its Washing Machines were untrue, deceptive and misleading, in violation of the WDTPA.

224. LG's assertions, representations and statements of fact concerning the qualities and characteristics of its Washing Machines were untrue, deceptive and misleading because they misrepresented and concealed, suppressed and failed to disclose facts concerning defects in its products that cause the formation of mold, mildew and/or odor within such products.

225. LG's untrue, deceptive and misleading assertions, representations and statements of fact concerning the qualities and characteristics of its Washing Machines materially induced Plaintiff Demski and other members of the Wisconsin Sub-Class to purchase LG's Washing Machines.

226. Plaintiff Demski and other members of the Wisconsin Sub-Class suffered pecuniary loss as result of LG's untrue, deceptive and misleading assertions, representations and

statements of fact concerning the qualities and characteristics of its Washing Machines.

227. Plaintiff Demski and other members of the Wisconsin Sub-Class are entitled to damages equal to their pecuniary loss and costs, including reasonable attorneys' fees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and the Class and, where applicable, the Sub-Classes, pray for judgment against Defendant granting the following relief:

- a. An order certifying this case as a class action and appointing Plaintiffs' counsel to represent the Class and the Sub-Classes;
- b. Restitution and disgorgement of all amounts obtained by LG as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- c. All recoverable compensatory and other damages sustained by Plaintiffs and the Class and Sub-Classes;
- d. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Class and Sub-Classes in the maximum amount permitted by applicable law;
- e. An order (1) requiring LG to immediately cease its wrongful conduct as set forth above; (2) enjoining LG from continuing to conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (3) ordering LG to engage in a corrective notice campaign; and (4) requiring LG to refund to Plaintiffs and all members of the Class the funds paid to LG for the defective Washing Machines;
- f. Statutory pre-judgment and post-judgment interest on any amounts;
- g. Payment of reasonable attorneys' fees and costs as may be allowable under applicable law; and

h. Such other relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all causes of action so triable.

May 6, 2008

Respectfully submitted,

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